Official Gazette

REPUBLIC OF THE PHILIPPINES

Edited at the Office of the President, under Commonwealth Act No. 638
Entered as second-class matter, Manila Post Office, December 26, 1905

VOL. 46 MANILA, PHILIPPINES, APRIL 1950 NO. 4

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MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 309

MAKING THE DIRECTOR OF PUBLIC WORKS AN EX OFFICIO MEMBER OF THE NATIONAL URBAN PLANNING COMMISSION AND AMENDING EXECUTIVE ORDER NO. 98, DATED MARCH 11, 1946, ACCORDINGLY.

Pursuant to the authority vested in me by Republic Act No. 422, entitled "An Act authorizing the President of the Philippines to reorganize within one year the different executive departments, bureaus, offices, agencies and other instrumentalities of the Government, including the corporations owned or controlled by it," I, Elpidio Quirino, President of the Philippines, do hereby make the Director of Public Works an ex officio member of the National Urban Planning Commission created under Executive Order No. 98, dated March 11, 1946.

Section 2 of said Executive Order No. 98 is hereby amended accordingly.

Done in the City of Baguio, this 5th day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 310

FINALLY REQUIRING THE REGISTRATION AND DEPOSIT OF BANK OF THE PHILIPPINE ISLANDS CIRCULATING NOTES.

WHEREAS, a number of holders of Bank of the Philippine Islands circulating notes failed to register and deposit their holdings in accordance with the provisions of Executive Order No. 166, dated August 20, 1948;

WHEREAS, after all the Bank of the Philippine Islands circulating notes registered and deposited under Executive Order No. 166 shall have been redeemed, there would be a balance in the amount of ₱13,935 still available for further redemption out of the sum reserved for the redemption of Bank of the Philippine Islands circulating notes;

WHEREAS, it is desirable to retire all Bank of the Philippine Islands circulating notes, including those that are still in the hands of the public; and

WHEREAS, in order that a plan may be devised for carrying out the above purpose, it is necessary to determine the aggregate amount of unregistered and undeposited circulating notes of the Bank of the Philippine Islands still in the hands of the public;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby order and direct:

1. Within a period of three months from the date of this Order every holder of Bank of the Philippine Islands circulating notes not previously registered and deposited under Executive Order No. 166, dated August 20, 1948, shall present such circulating notes in his possession to the Treasurer of the Philippines who shall accept such notes, register and safely keep the same, and issue receipts therefor, stating the names and addresses of the persons registering and depositing said notes, the serial numbers thereof, their denominations, the amount of each denomination and the total amount.

2. Within a period of one month from the termination of the final registration and deposit of unregistered Bank of the Philippine Islands circulating notes hereinabove provided, the Treasurer of the Philippines shall submit to the Secretary of Finance a report of the total amount of said circulating notes thus registered and deposited, and the Secretary of Finance shall forthwith submit a similar report to the President of the Philippines.

3. All Bank of the Philippine Islands circulating notes not registered and deposited as hereinabove provided within the period of three months from the date of this Order shall not thereafter be accepted for registration and deposit.

4. The Treasurer of the Philippines, with the approval of the Secretary of Finance, is hereby authorized to issue the necessary rules and regulations to give force and effect to the provisions of this Order.

Done in the City of Baguio, this 22nd day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 311

ABOLISHING THE MUNICIPALITY OF LAPINIG IN THE PROVINCE OF SAMAR, AND RESTORING THE DIFFERENT BARRIOS COMPOSING THIS MUNICIPALITY TO THE RESPECTIVE MUNICIPALITIES AND THE MUNICIPAL DISTRICT TO WHICH THEY BELONGED BEFORE BECOMING PARTS OF LAPINIG.

WHEREAS, the segregation from the municipality of Gamay, Province of Samar, of the barrio of Lapinig and certain other barrios now forming parts of the municipality of Lapinig has been and still is being protested by the municipality of Gamay;

WHEREAS, evidence has been adduced to prove satisfactorily that it is quite difficult, if not impossible, for the mother municipality of Gamay to exist and, at the same time, provide for all its contractual and statutory obligations;

NOW, THEREFORE, upon the recommendation of the Provincial Governor of Samar and the Secretary of the Interior and pursuant to the provisions of section sixty-eight of the Revised Administrative Code, the municipality of Lapinig, as organized under Executive Order No. 281, dated October 13, 1949, is hereby abolished, and the portions thereof which formerly pertained to the municipalities of Gamay and Oras and the municipal district of Jipapad are hereby restored to the said municipalities and municipal district.

The abolition and restoration herein made shall take effect upon the expiration of thirty days from the date of receipt by the Mayor of Lapinig from the Provincial Governor of Samar a true copy of this Order.

Done in the City of Baguio, this 30th day of April in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 174

DECLARING SATURDAY, APRIL 8, 1950, A SPECIAL PUBLIC HOLIDAY

WHEREAS, a petition has been received from the Bankers Association of the Philippines requesting that the eighth day of April, nineteen hundred and fifty, be declared a special bank holiday;

WHEREAS, the sixth day (Holy Thursday) and the seventh day (Good Friday) of April, nineteen hundred and fifty, being public holidays, the eighth day (Saturday) of April, nineteen hundred and fifty, may be declared a special public holiday to the great advantage of the banking houses and without any disadvantage to the public in general;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, and there being in my judgment sufficient reasons therefor, do hereby proclaim Saturday, April eighth, nineteen hundred and fifty, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philipppines to be affixed.

Done in the City of Baguio, this 4th day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

[SEAL]

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 175

REVOKING PROCLAMATION NO. 666, DATED JANUARY 14, 1941, AND DECLARING ALL PETROLEUM DEPOSITS AND PETROLEUM LANDS COVERED THEREBY OPEN TO DISPOSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 387, OTHERWISE KNOWN AS THE PETROLEUM ACT OF 1949.

Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 11 of Commonwealth Act No. 137, as amended,

I hereby revoke Proclamation No. 666, dated January 14, 1941, and declare all petroleum deposits and petroleum lands covered thereby open to disposition under the provisions of Republic Act No. 387, otherwise known as the Petroleum Act of 1949.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 15th day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

[SEAL]

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 115

AMENDING ADMINISTRATIVE ORDER NO. 109, DATED FEBRUARY 28, 1950, ENTITLED "CREATING A COMMISSION TO ASSIST THE PRESIDENT IN REORGANIZING THE DIFFERENT EXECUTIVE DEPARTMENTS, BUREAUS, OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE GOVERNMENT, INCLUDING THE CORPORATION OWNED OR CONTROLLED BY IT, PURSUANT TO THE PROVISIONS OF REPUBLIC ACT NO. 422."

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby amend Administrative Order No. 109, dated February 28, 1950, by inserting, between the penultimate and the last paragraphs thereof, the following paragraph:

"The Chairman and the members of the Commission who are not otherwise officials or employees of the Government shall be entitled to a per diem for each meeting actually attended at the rates of ₱30 for the Chairman and ₱25 for each member."

Done in the City of Baguio, this 30th day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER NO. 173

March 30, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF MAYANTOC, TARLAC

For the information and guidance of all concerned, publication is hereby made that, under date of March 24, 1950, the municipality of Mayantoc, Tarlac, has been classified by His Excellency, the President of the Philippines, as third class, effective April 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 174

March 31, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF TOBOSO, NEGROS OCCIDENTAL

For the information and guidance of all concerned, publication is hereby made that the municipality of Toboso, Negros Occidental, has been classified by His Excellency, the President of the Philippines, as third class, effective April 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 175

March 31, 1950

CLASSIFICATION OF THE MUNICIPALITY OF TALUGTUG, NUEVA ECIJA

For the information and guidance of all concerned, publication is hereby made that the municipality of Talugtug, Nueva Ecija, organized under Executive Order No. 113, dated December 20, 1947, has been classified by His Excellency, the President of the Philippines, under date of March 4, 1950, as fourth class, pursuant to the provisions of Republic Act No. 130, effective on the date it began to exist as such municipality.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 176

April 1, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF IBA, ZAMBALES

For the information and guidance of all concerned, publication is hereby made that, under date of March 24, 1950, the municipality of Iba, Zambales, has been classified by His Excellency, the President of the Philippines, as third class, effective April 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 177

April 12, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF CALAUAG, QUEZON

For the information and guidance of all concerned, publication is hereby made that, under date of March 23, 1950, the municipality of Calauag, Quezon, has been classified by His Excellency, the President of the Philippines as second class, effective April 1, 1950, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 178

April 21, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF SANTA FE, CEBU

For the information and guidance of all concerned, publication is hereby made that, under date of April 5, 1950, the municipality of Sta. Fe, Cebu, has been classified by His Excellency, the President of the Philippines, as third class, effective May, 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

April 10, 1950

CHANGING THE NAMES OF PUBLIC PLACES AND PROJECTS BEARING NAMES OF FOREIGNERS

To all Provincial Boards and City Councils:

There is transcribed below, for the information and guidance of all concerned, 1st indorsement dated March 24, 1950, of this Department, to the Municipal Council of Cabugao, Ilocos Sur, through the Provincial Governor of said province:

"Respectfully returned, through the Provincial Governor, Vigan, Ilocos Sur, to the Municipal Council of Cabugao.

"The Municipal Council proposes for the reason stated in the attached resolution to rename after Filipino patriots, etc., the streets in that municipality bearing names of foreigners. The spirit of nationalism which prompted the move deserves commendation and encouragement. In fact the same tendency is noted with other municipal councils of the Islands.

"The policy heretofore enforced as transcribed in our Provincial Circular No. 2, dated December 16, 1946, is to disapprove, except in meritorious cases, changes in the names of streets and other public places in view of the resultant confusion in the mails, in the records of properties registered under the Torrens System and in the minds of the general public. In order that a proposed change may qualify as a meritorious case, this Department determines whether or not the perpetuation of the present name is contrary to public interest.

"Names of foreigners do not necessarily, by the mere incidence of their derivation, fall under this category. It does not seem to be incompatible with our sense of nationalism if we honor the citizens of other countries who have rendered signal service to humankind or had in their lifetime exercised great influence in our national affairs. Great Britain, the mother country of America, has built in the very heart of London a monument to Franklin D. Roosevelt. And yet Great Britain is not lacking in her own heroes, statesmen and patriots.

"It is therefore requested that this Department be advised of the derivations of the names of streets proposed to be changed as well as brief sketches of the lives of the proposed honorees. This should be accompanied by a sketch map (2 copies) showing the streets concerned with indication of their length and width in meters and the location of public improvements within the vicinity."

The contents hereof should be transmitted to the Municipal Councils and municipal district councils by the respective provincial boards who should be guided by the views expressed in the above quoted indorsement in passing upon propositions or resolutions of municipal and municipal district councils to rename public places and projects.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

April 11, 1950

ENACTMENT OF ORDINANCE REQUIRING REPORT FROM HOUSEHOLDERS CONCERNING PERSONS SOJOURNING WITH THEM.

To all Provincial Governors and City Mayors:

In view of the renewed activities of dissident elements and their infiltration into peaceful communities, it becomes the duty of all law-abiding citizens to cooperate with government agencies in checking and screening suspicious characters in their localities by reporting to the nearest local authorities, the presence of persons sojourning with them, they be relatives or strangers. To make effective and insure the success of this campaign, attention is again invited to the provisions of section 2276 of the Revised Administrative Code quoted hereunder:

"SEC. 2276. *Requirement of report from householders concerning persons sojourning with them.*—When the province or municipality is infested with outlaws, the municipal council, with the approval of the provincial governor, may further require each householder of any municipal center or of any barrio of the municipality to make prompt report to the mayor or municipal councilor of the barrio as the case may be, of the name, residence, and description of any person not a resident of such municipal center or barrio who may enter the house of such householder or receive shelter or accommodations therein. The report made to the municipal councilor of the barrio shall be transmitted by such councilor within twenty-four hours after its receipt to the mayor."

Provincial Governors and city mayors are therefore enjoined to comply with the above-quoted provisions of law by requesting the city, municipal and municipal district councils to enact an ordinance to enforce the aforementioned provisions of law with an appropriate penalty for failure of any householder to report the presence of persons sojourning with them to the local authorities.

The ordinance shall embody such provisions calculated to insure the success of our campaign to localize and stamp out lawlessness in all its forms. To this end, it is suggested that with respect to residents of barrios and outlying communities,

he ordinance should provide that report shall e submitted to the barrio lieutenants and the atter shall, in turn, transmit the same through he municipal councilor assigned to the barrio, o the mayor of the municipality, while residents f the poblacion shall submit their reports dirctly to the office of the Mayor. Said report hall state the name, residence (place of origin) nd description of the person sojourning and his urpose of coming to the locality.

Provincial Governors and city mayors are requested to give the widest publicity possible to he contents of this circular by transmitting copies ereof to all municipal and city officials concerned nder their respective jurisdiction for their information and guidance.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

April 14, 1950

ANOMALIES IN THE ENFORCEMENT OF MOTOR VEHICLES LAW

For the information of all concerned there is uoted hereunder, the Letter-Memorandum dated Iarch 10, 1950, to this Department, of the Secreary of Public Works and Communications:

"In the face of anomalies in the enforement of the Motor Vehicles Law on public highways and which has been the subject of widely publicized newspaper comment, the undersigned wishes to bring to your attention the pertinent provisions of the Motor Vehicles Law. In addition to the regular deputies or agents of the Chief of the Motor Vehicles Office, section 4, article III, paragraph (*j*) of Act 3992 authorized every Constabulary officer and every city or municipal police officer *not lower than the rank of Sergeant* to prevent violations of this Act, and to carry out the police provisions hereof within their respective jurisdictions. Attention is specifically invited to this fact that only such officers not lower than the rank of Sergeant are given such authority by the law.

"In matters of speed limits section 55, Articlc V of the Motor Vehicles Law provides: 'No provincial, city or municipal authority shall enact or enforce any ordinance or resolution specifying allowable speeds either lower or higher than those provided in the preceding section, and no such authority shall in any way regulate the allowable gross weight of any motor vehicle.' It has been noted that in some cities and municipalities these speed limits provided in the Motor Vehicles Law have been lowered or reduced in violation of the provisions of law cited above.

"Another important provision of the rules and regulations governing agents to enforce the Motor Vehicles Law is found in section 56, paragraph (*b*), Administrative Order No. 36–9 dated December 1, 1936, of the Department of Public Works and Communications, which provides as follows: 'They may not suspend any chauffeur's license or permit, but may require the surrender of and take up such chauffeur's license and badge, if any, for any violation of the Motor Vehicles Law, provided that a temporary operator's permit shall be immediately issued to the person surrendering his chauffeur's license and badge, covering a period of not exceeding 30 days and such license and badge shall be forwarded to the district engineer or the Director of Public Works (Chief of Motor Vehicles Office) within *24 hours*, with a report of such recommendation as may be necessary, for the action of the district engineer or the Director of Public Works (Chief of the Motor Vehicles Office). All other actions required of deputies in such cases shall be complied with by automobile inspectors.' Numerous cases have been brought to the attention of the Motor Vehicles Office of repeated non-compliance of police officers in surrendering confiscated drivers' licenses and badges within *24 hours* to the Chief of the Motor Vehicles Office as required in the law. The undersigned is bringing these particular provisions of the Motor Vehicles Law to the attention of the Department of the Interior as our office has no jurisdiction over police officers and Constabulary officers as such, with a view to securing a closer and constant cooperation in the enforcement of the Motor Vehicles Law which will redound to the minimization of these violations."

It is hereby enjoined that the contents of the foregoing Letter-Memorandum be transmitted to all municipal mayors and councils and other officials concerned, particularly those connected with the enforcement of the Motor Vehicles Law for their guidance and strict compliance.

SOTERO BALUYUT
Seeretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

April 20, 1950

FISHERIES ADMINISTRATIVE ORDER NO. 25, DATED AUGUST 5, 1949, OF THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES—STRICT COMPLIANCE WITH—

To all Provincial Governors, City Mayors, and the Chief of Constabulary:

For your information and guidance, there is quoted hereunder Administrative Order No. 25, dated August 5, 1949, of the Honorable, the Secretary of Agriculture and Natural Resources:

"FISHERIES ADMINISTRATIVE ORDER NO. 25

"August 5, 1949

REGULATIONS FOR THE CONSERVATION OF "SABALO" (FULL-GROWN BAÑGOS OR MILKFISH) AND FOR THE PROHIBITION OF THE EXPORTATION TO FOREIGN COUNTRIES OF "KAWAGKAWAG" (BAÑGOS OR MILKFISH FRY) AND "HATIRIN" (BAÑGOS FINGERLINGS).

Pursuant to the provisions of section 79 (*b*) of the Administrative Code, of Sections 4, 7, 13 and 19 of Act 4003, entitled, "An Act to Amend and Compile the Laws Relating to Fish and Other Aquatic Products of the Philippine Islands and for Other Purposes," as amended by Commonwealth Act 471 and for the protection and conservation of certain species of fish commonly known as "sabalo" or full-grown bañgos (milkfish) and scientifically known as *chanos chanos* (forskal), and the prohibition of the exportation to foreign countries of "kawagkawag" or bañgos (milkfish) fry and of "hatirin" or bañgos (milkfish) fingerlings, the following rules and regulations are hereby promulgated for the information and guidance of all concerned:

1. *Definitions.*—For the purpose of this Administrative Order, the following terms as used herein shall be construed as follows:

(*a*) "Possession" means actual or constructive possession or any control of the things referred to.

(*b*) "Sell" or "sale" includes bartering, exchanging, or offering or exposing for sale.

(*c*) "Transport" or "transportation" means carrying or moving or causing to be carried or moved.

(*d*) "Taking" or "carrying" includes pursuing, shooting, killing, capturing, trapping, snaring and netting fish and comprises any such act as disturbing, wounding, stupefying or placing, setting, drawing or using any net or other means or device commonly used to catch or collect fish or other aquatic animals, whether they result in the catching or not, and includes every attempt to catch and every act of assistance to every other persons taking or attempting to take or collect fish or other aquatic animals: *Provided,* that whenever taking is authorized by law, it refers to taking by lawful means or in lawful manner.

(*e*) "Sabalo" or full-grown bañgos shall mean bañgos which are sexually mature, in spawning condition, or carrying ripe eggs and milt.

(*f*) "Kawagkawag" or bañgos fry means the very tiny, transparent, big-eyed bañgos, measuring from one to two centimeters in length, which swim in vast shoals near the shore line of shallow sandy coasts and which enter estuaries and tidal creeks.

(*g*) "Hatirin" or bañgos fingerlings means young bañgos of fiingerlings size, usually beyond the fry stage up to 10 centimeters long, grown in the nursery ponds.

2. *Restrictions*—

(*a*) No fish corrals, traps, or any device shall be set or placed across any river, or stream which connects an inland body of water with the sea unless regulated by or under authority of the Secretary of Agriculture and Natural Resources, to allow enough space for the free passage of full-grwon bañgos (Sabalo) to enable them to reach the spawning or breeding grounds.

(*b*) No fish corral, fish trap, or "baklad" shall be constructed within 200 meters of another in marine fisheries, or 100 meters in fresh water fisheries, unless they belong to the same licensee, but in no case shall they be less than 60 meters apart.

3. *Prohibitions*—

(*a*) It shall be illegal during the period from February 1, to July 31, inclusive of each year, for any person, association or corporation to catch or cause to be caught in Philippine territorial and inland waters, or purchase, sell, offer or expose for sale full-grown bañgos (Sabalo) measuring more than sixty (60) centimeters in length from the tip of the mouth to the extreme end of the caudal fin or tail, dead or alive, or to have in possession or in storage the same, unless exempted as provided in Section 4 of this Administrative Order.

(*b*) It shall be illegal at all times for any person, association or corporation to export or cause to be exported to foreign countries, bañgos fry (Kawagkawag) and bañgos fingerlings (Hatirin).

4. *Exemptions*—

(*a*) The Secretary of Agriculture and Natural Resources may grant, free of charge, to any person, association, institution or corporation of good repute, a permit to catch or cause to be caught bañgos of any size and age otherwise prohibited in this Administrative Order, provided they are used exclusively for scientific, or educational purposes and subject to such conditions and limitations as the Secretary of Agriculture and Natural Resources may prescribe for the proper conservation of this species.

(*b*) Persons catching bañgos of any size and age under the aforesaid licenses but found using them for purposes other than those specified in the licenses or permits shall be subject to the same penalty as if no permit has ever been granted.

5. *Enforcement.*—For the purpose of enforcing the provisions of this Administrative Order and of such regulations as may hereafter be promulgated, fish wardens and inspectors, members of the Philippine Naval Patrol, members of the Phil-

ippine Constabulary and Philippine Army, members of the provincial, city, municipal and municipal district police, members of the secret service force, harbor police, and inspectors, guards and wharfingers of the Bureau of Customs, Internal Revenue officers and agents, officers of Coast Guard cutters, lighthouse keepers, and such other competent officials, employees or persons as may be designated in writing by the Secretary of Agriculture and Natural Resources, are hereby made deputies by said Department Head and empowered:

(*a*) To ascertain whether or not persons found engaged in fishing for "Sabalo" or full-grown bangos or bangos fry are duly provided with licenses or permits required in this Administrative Order.

(*b*) To arrest any person found committing or attempting to commit an offense against the provisions of this Administrative Order.

(*c*) To seize or confiscate, when deemed necessary, for evidence or for such purposes as the Secretary of Agriculture and Natural Resources or his duly authorized representative may consider advisable, any fishing gear or apparatus or fishing equipment used or which may be used to catch, kill or take, any fish, and fish caught or killed or otherwise taken or found in the possession of any person, for export or any other purpose, in violation of this Administrative Order; and

(*d*) To file the necessary action in court for any violation of this Administrative Order and otherwise report said violation to the Secretary of Agriculture and Natural Resources or to the Director of Fisheries.

6. *Penalty.*—Any violation of the provisions of his Administrative Order shall subject the offender o a fine of not more than ₱200, or imprisonment or not more than six months, or both, in the liscretion of the court, as provided for in section 3 of Act No. 4003, as amended by Commonwealth ict 471.

7. *Repealing provision.*—All administrative orders nd regulations, or parts thereof, inconsistent with he provisions of this Administrative Order, are ereby revoked.

8. *Effectivity.*—This Administrative Order shall ake effect sixty days after its publication in the *fficial Gazette.*

PLACIDO L. MAPA
Secretary of Agriculture and Natural Resources

Approved:

By authority of the President:

TEODORO EVANGELISTA
Executive Secretary"

According to the Honorable, the Secretary of griculture and Natural Resources, a rampant olation is being committed by fishermen in the catching of "sabalos or milkfish" which, if not immediately stopped, will result in the scarcity of "bangos" fry to the detriment not only of the fishpond owners, but also the people because not only the price of bangos will go up but also that of other fish being sold in the market.

In order to help promote the "bangos" industry and incidentally protect the welfare of the fish consuming public, it is desired that appropriate instructions be forthwith issued to all local officials under your respective jurisdiction, particularly the members of the local police forces, enjoining them to enforce the provisions of the aforequoted Administrative Order, particular attention being invited to paragraph 6 thereof providing penalty for violations of its provisions.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 39

April 1, 1950

DESIGNATING SPECIAL ATTORNEY LUIS M. KASILAG OF THE OFFICE OF THE SOLICITOR GENERAL TO ASSIST THE PROVINCIAL FISCAL OF CAMARINES NORTE IN THE PROSECUTION OF A CERTAIN CASE.

In the interest of the public service, and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Luis M. Kasilag, Special Attorney of the Office of the Solicitor General, is hereby designated to assist the provincial fiscal of Camarines Norte in the prosecution of the PAL plane explosion case now pending trial in the Court of First Instance of said province, effective immediately.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 42

April 4, 1950

AUTHORIZING CADASTRAL JUDGE JOSE P. FLORES TO DECIDE IN SAN FERNANDO, LA UNION CERTAIN CADASTRAL CASES.

In the interest of the administration of justice and pursuant to the request of Cadastral Judge Jose P. Flores, he is hereby authorized to decide in San Fernando, La Union, cadastral case No. 30, lot No. 29657, G.L.R.O. cadastral record No. 1172 and cadastral case No. 53, lot No. 11494, G.L.R.O. cadastral record No. 1221; and to resolve the motion to quash the information filed by the accused in criminal case No. 972 which were previously tried by him while holding court in Ilocos Norte, and submitted to him for decision and resolution.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 43

April 10, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950, INSOFAR AS THE ASSIGNMENT OF VACATION JUDGES FOR NUEVA ECIJA IS CONCERNED.

Administrative Order No. 12 of this Department, dated January 30, 1950, is hereby amended insofar as the assignment of vacation judges for the Province of Nueva Ecija during the months of April and May, 1950 is concerned, as follows:

For the Province of Nueva Ecija, District Judge Mariano Melendres for April and May.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 44

April 10, 1950

AUTHORIZING JUDGE MARIANO NABLE OF THE FOURTH JUDICIAL, FIRST BRANCH, NUEVA ECIJA, TO DECIDE IN MANILA CERTAIN CASES.

In the interest of the administration of justice and pursuant to the request of Hon. Mariano Nable, Judge of the Fourth Judicial District, Nueva Ecija, First Branch, he is hereby authorized to decide in Manila from April 1 to 15, 1950, the following cases of the Court of First Instance of Nueva Ecija, which were previously tried by him while presiding over said Court:

1. Civil case No. 8889—Tomasa Bulos Vda. de Tecson *vs.* Benjamin Tecson et al.
2. Civil case No. 8357—Valentina Tagle et al. *vs.* Juan Tagle et al.
3. Civil case No. 193—J Vicente Sotto et al. *vs.* Juan T. David.
4. Civil case No. 185—L Damiana Cachuela et al. *vs.* Guillermo Cachuela et al.
5. Civil casc No. 161 and 7611—Bartolome Driz et al. *vs.* Leon C. Viardo.
6. Civil case No. 127—Paulina Urina et al. *vs.* Leon Domingo.
7. Civil case No. 185—J Felipa Feria et al. *vs.* Geronimo T. Suva.
8. Civil case No. 431—Angelo Vinluan *vs.* Cirilo Sumangil.
9. Civil case No. 251—Diego S. Andres et al. *vs.* Victor Andres et al.
10. Civil case No. 581—Valentin Castelo *vs.* Consuelo Castelo et al.
11. Civil case No. 570—Aniceto Sobrepeña *vs.* Co King Tong.
12. Civil case No. 505—Mplty. of Cabanatuan *vs.* Archibishop of Manila et al.
13. Civil case No. 567—Lorenzo de Guzman *vs.* Leonardo Azarcon et al.
14. Civil case No. 563—Republic of the Philippines *vs.* Provincial Sheriff et al.
15. Special Proclamation 415—Testate Estate of Josefa Carbonel.
16. Criminal case No. 975—P.P.I. *vs.* Galicano P. Caling.
17. Criminal case No. 873—P.P.I. *vs.* Aquilino Villanueva.
18. Criminal case No. 1231—P.P.I. *vs.* Narciso Dumali et al.
19. Criminal case No. 1233—P.P.I. *vs.* Narciso Dumali et al.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 45

April 12, 1950

AUTHORIZING JUDGE JUAN A. SARENAS OF THE SIXTEENTH JUDICIAL DISTRICT, COTABATO, TO DECIDE CERTAIN CASES DURING THE COURT VACATION PERIOD.

In the interest of the administration of justice and pursuant to the request of the Honorable Juan A. Sarenas, Judge of the Sixteenth Judicial District, Cotabato, he is hereby authorized to decide during the Court vacation period the following cases which were previously tried by him while presiding over the Court of First Instance of said province:

Criminal case No. 711, People *vs.* Manonotok Tasil.

Criminal case No. 736, People *vs.* Blah Mama et al.

Civil case No. 88, Herederos del Difunto Albino R. Barlaan: Valeria B. Barlaan, Leticia Barlaan, Albino Barlaan, Jr., y Emmanuel Barlaan, demandantes, *contra* Yu Enching Sero *alias* Eduardo Sero, Zacarias C. Antonio, como registrador de titulos, Flaviano Tabile y Naborita R. Tabile, demandados.

Registration case No. 11, G.L.R.O. record No. 2266, Bae Balula Akoy, applicant.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 46

April 13, 1950

AUTHORIZING CADASTRAL JUDGE MAXIMO ABAÑO TO HOLD COURT IN POLILIO, QUEZON, IN ADDITION TO PREVIOUS GRANT OF AUTHORITY.

In addition to the authority granted to Cadastral Judge Maximo Abaño under Administrative Order No. 12 of this Department, dated January 30, 1950, he is hereby authorized to hold court in the municipality of Polilio, Province of Quezon, from May 15, 1950, for the purpose of trying all kinds of cases arising from said municipality and the munic-

palities of Infanta, Casiguran and Baler, same rovince, and to enter final judgment therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 47

April 17, 1950

UTHORIZING CADASTRAL JUDGE MAXIMO ABAÑO TO HOLD COURT IN POLILIO AND BALER, QUEZON, IN ADDITION TO PREVIOUS GRANT OF AUTHORITY.

In addition to the authority granted to Cadas-ral Judge Maximo Abaño under Administrative rder No. 12 of this Department, dated January 0, 1950, he is hereby authorized to hold court in ne municipalities of Polilio and Baler, Province f Quezon, from May 15, 1950, for the purpose of rying all kinds of cases arising from said munic-palities and the municipalities of Infanta, Bur-eos, General Nakar, Casiguran and Maria Aurora, ame province, and to enter final judgment therein. This cancels Administrative Order No. 46 of this Department, dated April 13, 1950.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 48

April 18, 1950

ESIGNATING ASSISTANT PROVINCIAL FISCAL MARCELO MALLARI OF PAMPANGA TO ACT AS REGISTER OF DEEDS OF PAMPANGA UNTIL FURTHER ORDERS.

In the interest of the public service, and pursuant o the provisions of section 201 of the Administrative Code, as amended by Republic Act No. 164, Mr. Marcelo Mallari, Assistant Provincial Fiscal of Pampanga, is hereby designated to act as register f deeds for said province effective immediately nd until further orders.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 51

April 24, 1950

ESIGNATING SPECIAL COUNSEL JOSE PADILLA OF QUEZON CITY AS ACTING JUDGE OF THE MUNICIPAL COURT OF QUEZON CITY.

In the interest of the public service and pur-uant to the provisions of section 21, Common-ealth Act No. 502, as amended by Commonwealth ct No. 569, Mr. Jose Padilla, Special Counsel of uezon City, is hereby designated acting judge of e municipal court of Quezon City, during the sence on leave of Judge Prudencio Encomienda said Court from May 2 to 31, 1950, inclusive.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 52

April 25, 1950

AUTHORIZING JUDGE FIDEL IBAÑEZ OF THE EIGHTH JUDICIAL DISTRICT, LAGUNA, SECOND BRANCH, TO CONTINUE DECIDING CERTAIN CASES IN CAVITE CITY.

In the interest of the administration of justice and pursuant to the request of the Honorable Fidel Ibañez, Judge of the Eighth Judicial District, Laguna, second branch, he is hereby authorized to continue deciding in Cavite City from April 21, 1950 to May 31, 1950, the following cases of the Court of First Instance of Laguna, the first five of which were previously tried by him while presiding over the said Court and the last one which upon agreement of the parties was submitted to him for decision:

1. Civil case No. 8072, "Erlanger & Galinger, Inc. *vs.* Gil Exconde et al." for the recovery of possession and ownership of certain parcels of land.
2. Civil case No. 6249, "Erlanger & Galinger, Inc. *vs.* Gil Exconde et al." for the reconstitution of the records of said case, foreclosure of mortgage of the same properties involved in civil case No. 8072.
3. Land registration case No. 7, G.L.R.O. No. 244, "Gil Exconde et al." applicants *vs.* Erlanger Galinger, Inc. Oppositors" for the registration of some of the parcels of land involved in civil case No. 8072.
4. G.L.R.O. record No. 1201, lots 39 and 48. Petition of Erlanger & Galinger, Inc. in recancellation of transfer certificates of titles Nos. 9062 and 9089.
5. Civil case No. 7989, "Regino Relova et al. *vs.* Roberto Calo et al."
6. Civil case No. 7951, "Regino Relova et al. *vs.* Tranquilino Calo et al."

Judge Ibañez is also hereby authorized to pass upon motions previously submitted to him but which are pending resolutions.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 53

April 26, 1950

AUTHORIZING JUDGE FRANCISO JOSE OF THE FIFTH JUDICIAL DISTRICT, BULACAN, SECOND BRANCH, TO DECIDE IN MALOLOS, BULACAN, CERTAIN CASES.

In the interest of the administration of justice and pursuant to the request of the Honorable Francisco Jose, Judge of the Fifth Judicial District, Bulacan, second branch, he is hereby authorized to decide in Malolos, Bulacan, during the month of April, 1950, cases which were previously tried by him and submitted for decision.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 54

April 28 1950

AUTHORIZING JUDGE-AT-LARGE TEODORO CAMACHO TO HOLD COURT IN BASILAN CITY FROM MAY 3, 1950, FOR THE PURPOSE OF TRYING ALL KINDS OF CASES AND TO ENTER FINAL JUDGMENTS THEREIN.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Teodoro Camacho, judge-at-large, is hereby authorized to hold court in Basilan City from May 3, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

DEPARTMENT OF LABOR

BUREAU OF INDUSTRIAL SAFETY ORDER No. 1

January 10, 1950

MACHINERY INSTALLATION, INSPECTION, AND PERMIT FOR OPERATION

To all Machinery Owners and Operators:

For the information and guidance of all concerned, section 1(*d*) of Republic Act No. 367, creating the Bureau of Industrial Safety, is hereunder quoted:

> "SECTION 1(*d*). To inspect all industrial establishment, mines or any place of employment, including shops, factories, warehouses and bodegas, and machineries, engines, motors, generators, and other prime movers, mechanical, electrical, and hydraulic engines or devices, gas tanks, oil tanks, boilers and pressure vessels, or motor vehicles to insure their safety, and enforce provisions of this Act."

By virtue of the above provisions of law, it is hereby ordered that no machinery, engines, motors, generators, and other prime movers, mechanical, electrical and hydraulic engines or devices shall be installed or operated in the Philippines without a written permit issued for the purpose by the Commissioner of the Bureau of Industrial Safety. The mechanical safety inspection division shall make, during installations and annually thereafter, inspection of the machinery foundations, machine parts, safety control apparatus, and other auxilliaries. If, upon such inspection, the machinery and its controlling apparatus be found to be in a condition safe for operation, a written permit good for a period of one year from the date of inspection shall be issued.

All applications for the installation of mechanical equipment or machinery shall be filed in the Bureau of Industrial Safety. Application forms for the purpose may be secured upon request from the said Office.

P. G. MALIUANAG
Acting Commissioner

Approved:

PRIMITIVO LOVINA
Secretary of Labor

BUREAU OF INDUSTRIAL SAFETY ORDER No. 2

January 27, 1950

FEES FOR THE INSPECTION OF ENGINES AND MACHINERY OR MECHANICAL DEVICES

In accordance with the advice of the Advisory Safety Council, and pursuant to the provisions of section 1(*e*) of Republic Act No. 367, the following schedules of fees for the inspection of internal combustion engines and machinery or mechanical devices are hereby promulgated:

(*a*) For internal-combustion engines:

Under 10 H.P.	₱10.00
10– 30 H.P.	25.00
31– 50 H.P.	35.00
51– 70 H.P.	45.00
71– 90 H.P.	55.00
91– 100 H.P.	60.00
101– 300 H.P.	100.00
301– 500 H.P.	150.00
501–1,000 H.P.	200.00
For every horsepower or fraction thereof, 1,000 H.P.	0.25

The term "horsepower" (H.P.) as used in this order, shall mean the mechanical unit or power equal to five hundred fifty (550 ft–lb.) foot-pounds per second, and shall apply to the normal horsepower rating of the engine, or other prime mover, at full load, as stamped on the name plate attached to the prime mover. In the absence of a name plate, the horsepower rating shall be determined by the conventional method used in the approved Mechanical Engineer's Handbooks.

(*b*) For machinery or mechanical device (horse power rating based on driver), for each unit:

Under 1 H.P.	₱5.00
1–5 H.P.	10.00
6–10 H.P.	15.00
11–20 H.P.	20.00
21–30 H.P.	25.00
31–40 H.P.	30.00
41–50 H.P.	35.00
51–60 H.P.	40.00
61–70 H.P.	45.00
71–80 H.P.	50.00
81–90 H.P.	55.00
91–100 H.P.	60.00
101–300 H.P.	100.00
301–500 H.P.	150.00
501–1000 H.P.	200.00
For every horsepower or fraction thereof, in excess of 1000 H.P.	0.25

(*c*) In addition to the fees fixed above, owners of internal-combustion engines and machinery or mechanical devices, shall be charged actual expenses incurred in the inspection of their respective internal-combustion engines and machinery or mechanical devices by inspectors of this Bureau.

In order to insure collection of the fees provided herein, and to avoid misunderstanding, owners of internal-combustion engines and machinery or mechanical devices, shall make a deposit of an amount sufficient to cover the inspection fees before actual inspection is commenced.

All previous orders regarding this matter are hereby revoked. Effective January 27, 1950.

P. G. MALIUANAG
Acting Commissioner

Approved:

JOSE FIGUERAS
Undersecretary of Labor

February 10, 1950

BUREAU OF INDUSTRIAL SAFETY ORDER No. 4

FEES FOR THE INSPECTION OF INDUSTRIAL AND COMMERCIAL MOTOR VEHICLES

Pursuant to the provisions of section 1(*e*) of Republic Act No. 367 and in accordance with the advice of the Advisory Safety Council, the following schedule of fees for the inspection of industrial and commercial motor vehicles is hereby promulgated:

Motor vehicles:

Under 10 H.P.	₱5.00
10–30 H.P.	10.00
31–50 H.P.	15.00
Over 50 H.P.	20.00

In addition to the fees fixed above, there shall be charged actual expenses incurred in the inspection of said motor vehicles.

The term "horsepower" (H.P.) as used in this order shall mean the taxable horsepower which is equal to (nb^2/k), where "n" equals the number of cylinders, "b", the diameter of cylinder bore in inches, and "k", a constant which is equal to 2.5.

Owners, agents, operators, or persons in charge of industrial and commercial motor vehicles are hereby requested to deposit with this Bureau sufficient amount to cover the fees and expenses mentioned above before actual inspection is made.

All previous orders or regulations inconsistent herewith are hereby revoked.

P. G. MALIUANAG
Acting Commissioner

Approved:

PRIMITIVO LOVINA
Secretary of Labor

February 20, 1950

BUREAU OF INDUSTRIAL SAFETY ORDER No. 5

MOTOR VEHICLE SAFETY INSPECTION

For the information and guidance of all concerned, Republic Act No. 367, creating the Bureau of Industrial Safety, is hereunder quoted:

"Sec. 1. The Bureau of Industrial Safety . . . . shall have the following powers and functions:

* * * * * * *

(*d*) "To inspect all industrial establishment, mines or any place of employment, including shops, factories, warehouses and bodegas, and machineries, engines, motors, generators, and other prime movers, mechanical, electrical, and hydraulic engines or devices, gas tanks, oil tanks, boilers and pressure vessels, or motor vehicles to insure their safety, and enforce the provisions of this Act."

By virtue of the above provisions of law, every owner, agent, operator, or person in charge of any industrial or commercial motor vehicle is hereby enjoined to file an application for its inspection with the Bureau of Industrial Safety not later than June 30, 1950. Application forms for the purpose may be secured upon request from said Office at 1040 Arlegui St., Quiapo, Manila.

The inspection shall include a thorough examination and testing of the braking systems, steering mechanisms, lighting systems, frames, body, wheels, and other parts or accessories to insure the safe operation of the motor vehicle. If after inspection the motor vehicle is found to be in good condition for operation, a certificate shall be issued good for a period of six months from the date of inspection.

In this connection every distributor or dealer in motor vehicle is hereby requested to furnish the Commissioner of the Bureau of Industrial Safety with a report, in duplicate, of monthly sales showing the following data:

1. Name of buyer
2. Address of buyer
3. Make, type, model, factory or chassis and motor number
4. Purpose for which intended
5. Date of sale and delivery
6. New or second-hand

P. G. MALIUANAG
Acting Commissioner

Approved:

PRIMITIVO LOVINA
Secretary of Labor

March 2, 1950

BUREAU OF INDUSTRIAL SAFETY ORDER No. 6

RULES AND REGULATIONS PERTAINING TO CONSTRUCTION, DEMOLITION, ALTERATION, AND USE OF INDUSTRIAL BUILDINGS, ETC.; AND THE ISSUANCE OF CORRESPONDING PERMITS.

By virtue of the provisions of section 1 (*c*) of Republic Act No. 367, the following rules and regulations pertaining to the construction, demolition, alteration, and use of industrial buildings including shops, factories, bodegas, warehouses, and other working places are hereby promulgated:

1. No construction, demolition, alteration, and use of any industrial building, including shop, factory, bodega, warehouse, and other working place shall be undertaken without a written permit issued for the purpose by the Commissioner of Industrial Safety. Application in connection therewith shall be filed with the Bureau of Industrial Safety accompanied by two sets of plans, location plan and specifications, duly prepared by, or under the charge of, a licensed architect or civil engineer, signed by him and approved by the owner.

2. Construction, demolition, alteration, and use of industrial buildings or other working places of less than 50 square meters in floor area shall be exempted from the requirement of par. 1, hereof; a sketch for the project duly signed by the owner will be sufficient.

3. Unless otherwise exempted, the work shall be executed under the charge or supervision of a duly licensed architect or civil engineer.

4. All other rules and regulations promulgated by the Bureau of Industrial Safety in connection with the safety of the construction shall be complied with.

5. Access to the building and other facilities shall be accorded to the Commissioner or his authorized representatives while the work is in progress.

6. The building shall not be occupied in whole or in part, unless a Certificate of Safety shall have been obtained from the Commissioner of Industrial Safety.

7. Owners or lessees of existing buildings and working places and those already under construction upon the promulgation of this order shall submit to this Office the actual diagrammatical layout of their plants for verification and approval.

P. G. MALIUANAG
Acting Commissioner

Approved:

PRIMITIVO LOVINA
Secretary of Labor

March 2, 1950

BUREAU OF INDUSTRIAL SAFETY ORDER No. 7

SCHEDULE OF SAFETY INSPECTION FEES ON NEW INDUSTRIAL CONSTRUCTIONS, DEMOLITIONS, REPAIRS, ETC.

In accordance with the advice of the Advisory Safety Council and pursuant to the provisions of section 1 (*a*) of Republic Act No. 367, the following schedule of fees for the construction, addition, repair, alteration or demolition of any industrial building is hereby promulgated:

I. *Buildings of strong materials (wooden structures)*—

(*a*) For the construction of any structure with a total area not exceeding 50 square meters	₱6.00
(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*)....	.10
(*c*) For each meter or fraction thereof in excess of a height of 3 meters (height to include basement, cellar)	2.00
(*d*) For making repairs or alterations costing not more than ₱500 to an existing building (maintenance, repairs excluded)	5.00
(*e*) For every ₱100 or fraction thereof in excess of the amount in subsection (*d*)	2.00

II. *Reinforced concrete structures*—

(*a*) For the construction of any structure of a total area not exceeding 50 square meters	20.00
(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*)	.20
(*c*) For each meter or fraction thereof in excess of the height of 3 meters (height to include basement, cellar)	4.00
(*d*) For making repairs or alterations costing not more than ₱1,000 to an existing building	10.00
(*e*) For every ₱200 or fraction thereof in addition to the amount given in subsection (*d*).....	2.00

III. *Steel structures*—

(*a*) For the construction of any structure of a total area not exceeding 50 square meters	30.00
(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*)	.30

(*c*) For each meter or fraction thereof in excess of the height of 3 meters 6.00

(*d*) For making repairs or alterations not more than ₱2,000 to an existing building (maintenance, repairs excluded) 15.00

(*e*) For every ₱200 or fraction thereof in addition to the amount given in subsection (*d*) 2.00

IV. *Mixed reinforced concrete structures*—

(*a*) For the construction of any structure of a total area not exceeding 50 square meters 25.00

(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*) .... .25

(*c*) For each meter or fraction thereof in excess of the height of 3 meters 5.00

(*d*) For making repairs or alterations costing not more than ₱1,500 to an existing building (maintenance, repairs excluded) 7.50

(*e*) For every ₱200 or fraction thereof in addition to the amount given in subsection (*d*) ..... .20

V. *Structures of second class strong materials of sawali, bamboo, lumber and G. I. Sheets*—

(*a*) For the construction of a structure with an area not over 50 square meters 4.00

(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*) ..... .10

(*c*) For each meter or fraction thereof in excess of a height of 3 meters, provided that no structure of this type shall be made more than one story of five meters maximum height from ground floor to ceiling 1.00

VI. *Demolition (wooden structures)*—

(*a*) For the demolition of a condemned and/or old unserviceable building up to 100 square meters 5.00

(*b*) For every square meter in excess of the area given in subsection (*a*) ..... .05

VII. *Demolition (concrete, steel or mixed concrete)*—

(*a*) For the demolition of a condemned or old building of an area not exceeding 100 square meters 10.00

(*b*) For each square meter or fraction thereof in excess of the area given in subsection (*a*) ..... .10

(*c*) For every meter in height in excess of 3 meters 1.00

VIII. *Miscellaneous*—

(*a*) For the construction of a tower or silo per meter in height *Provided* that the minimum fee shall be 8.00

(*b*) For the construction of a smokestack of not more than 10 meters in height (steel, brick, etc.) 8.00

For every meter in excess of 10 meters ..... .80

(*c*) For moving or raising structure (strong materials) 8.00

(*d*) For the construction of an oven, kiln or furnace excluding those for use in private houses 8.00

All the necessary papers as outlined in Safety Order No. 6 shall be submitted to this Bureau, and all fees required shall be paid, upon filing an application for construction permit.

The owner, lessee, contractor, or person directly in charge of the work for which permit is applied for, shall be charged actual traveling expenses incurred in the safety inspection of the said work.

P. G. MALIUANAG
Acting Commissioner

Approved:

PRIMITIVO LOVINA
Secretary of Labor

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments confirmed by the Commission on Appointments:

April 11, 1950

Tomas C. Benitez, Consul of the Republic of the Philippines.

Hon. Ramon A. Icasiano, Hon. Guillermo Cabrera, Hon. Crisanto Aragon, and Hon. Francisco Geronimo, Judges of the Municipal Court of Manila.

Julio Villamor, Luis B. Reyes, Gregorio T. Lantin, D. Fernandez Lavadia, Cornelio S. Ruperto, Guillermo Dacumos, Carlos C. Gonzales, Guillermo Lim, Rafael Jose, Melecio Aguayo, Lorenzo Relova, Milagros German, Octavio F. Basa, Virgilio F. David, and Artemio Cusi, Assistant Fiscals of Manila.

Hon. Felix Bautista Angelo, Alfonso Calalang, Aurelio Periquet and Helen Benitez, Members of the Import Control Board.

April 21, 1950

Perfecto Querubin, Assistant People's Counsel in the Public Service Commission.

Estrella Abad Santos, Solicitor in the Office of the Solicitor General.

Honorio Romero, Provincial Fiscal, and Fernando Bartolome, Assistant Provincial Fiscal of Tarlac.

Joaquin Sola, Assistant Provincial Fiscal of Negros Occidental.

Arsenio Nañawa, Eulogio S. Serrano, Rafael Sison, Antonio Alindogan, Florentino Villanueva, and Roberto D. Cabrera, Assistant Fiscals of Manila.

Dr. Leopoldo Pardo and Prof. Marcelo Tangco, Members of the Board of Pardons and Parole.

Felix Ferrer, Municipal Judge of Bacolod City.

Otello Amonategui, Third Assistant City Attorney of Bacolod City.

Victor A. Imperial, Assistant City Attorney of Legaspi City.

Ignacio Calingin, Clerk of Court of Oriental Misamis.

Ramon Alonso, Deputy Clerk of Court of the City of Manila.

Arnulfo Obungen, Justice of the Peace of Burgos, La Union; Simeon Caces of Bauang, La Union; Paciano Rimando of Naguilian and Bagulin, La Union; Alejandrino A. Alviar of Bauko, Kayan and Sabangan, Mountain Province; Serafin Velez of Lagonglong and Kinoguitan, Misamis Oriental; Oscar Baltazar of Paniqui, Tarlac; Virgilio Tamayo of Cainta, Rizal; Florencio Florendo of Cuyapo, Nueva Ecija; Alfin S. Vicencio of Rizal, Nueva Ecija; Celestino V. Ramos of Maimbung and Talipao, Sulu; Nepomuceno Leaño of Santa Ana, Cagayan.

Hon. Vicente Y. Orosa, Chairman, and Isaias Fernando, Felix D. Maramba, Luis de Leon, and Buenaventura C. Lopez, Members of the Irrigation Council.

Fortunato M. Bulan, Member of the Board of Directors of the National Tobacco Corporation.

Dr. Pedro Areanas, Member of the National Urban Planning Commission.

April 25, 1950

Anatolio Ynclino, Provincial Assessor of Cebu.

Felipe B. Pareja, City Treasurer of the City of Cebu.

Genaro Ursal, City Assessor of the City of Cebu.

Jose S. Jusay, Member of the Board of Tax Appeals of Iloilo.

Manuel V. Feliciano, Member of the Board of Tax Appeals of Nueva Ecija.

REHABILITATION FINANCE CORPORATION

Lino Castillejo, designated Acting Chairman of the Board of Governors during the leave of absence of the regular incumbent, April 27, 1950.

PROVINCIAL TREASURERS AND ASSESSORS

Jose S. Guerrero, designated Acting Provincial Treasurer and Assessor of Catanduanes, April 5, 1950.

Marcelo Castro, designated Acting Provincial Treasurer and Assessor of Batanes, temporarily, April 10, 1950.

LABOR-MANAGEMENT ADVISORY BOARD

L. R. Aguinaldo, Jose Marcelo and Gonzalo Puyat, appointed Members of the Labor-Management Advisory Board, April 5, 1950.

PROVINCIAL OFFICIALS

Manuel Feliciano, designated Acting Member of the Provincial Board of Nueva Ecija, April 10, 1950.

MUNICIPAL OFFICIALS

Mariano Dayap, Councilor of Manito, Albay, April 20, 1950.

Juan Alegam, Timoteo Rojos and Magno Mantabute, Councilors of San Jacinto, Bohol, April 28, 1950.

Rufino Rudica, Councilor of Meycauayan, Bulacan, April 26, 1950.

Pablo Jadormeo, Mamerto Nebrea, Councilors of Pinamungajan, Cebu, April 10, 1950.

Federico Guerrero, Councilor of Sto. Domingo, Ilocos Sur, February 27, 1950.

Joseph T. Sanguila, Vice-Mayor of Kausuagan, Lanao, April 3, 1950.

Juan Autor, Councilor of Balingasag, Misamis Oriental, April 10, 1950.

Pedro Garcia, Councilor of Santa Rosa, Nueva Ecija, April 11, 1950.

Pedro Orbe, Councilor of Lucena, Quezon, April 10, 1950.

Eladio Villanueva, Councilor of Taytay, Rizal, April 13, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Address of His Excellency, President Elpidio Quirino, at the Commencement Exercises of the Far Eastern University, Manila, on April 15, 1950:

Mr. President, Members of the Board of Trustees, of the Faculty and of the Student Body:

I am deeply grateful for this opportunity to express a few thoughts to the faculty and student body of this great institution during your commencement exercises. I know of no occasion more appropriate than this gathering of earnest and thoughtful young men and women where I can speak frankly and realistically of the actual conditions that surround our world today and demand our sober appraisal.

I address myself specially to you, my friends, who belong to a postwar generation. As such, I would suppose you to be remarkably free of certain popular pre-war illusions. The searing events of the past decade have burnt away the three-fold veil from before our eyes: the illusion of automatic plenty, the illusion of invincible freedom, and the illusion of eventual permanent peace.

Today we know that the values which we have been prone to take for granted are no longer ours for the asking. We know that we must labor and fight for each and every one of them, and that once achieved, we shall be able to keep them only by constant and positive effort.

In a more fortunate era, it was not always so. We took for granted the wealth of our land and the fruitfulness of our economy. Hard times never imposed upon us the severe hardships which they brought in countries with a less resilient economy. An easy-going nature fitted us perfectly for a life of comparative ease, and our faith in the inevitable return of plenty was never for long disappointed.

Whenever our struggle for liberty suffered reverses or seemed completely lost, we sought refuge in the conviction that justice and righteousness would emerge victorious in the end, and freedom would be ours. We had a mystical belief that good would triumph over evil as surely as day follows night. Therefore, there was no reason to be alarmed over the future of liberty. Liberty would win out in the end.

Our attitude towards local disorders was that, like tropical storms, they would do some damage and then pass. They were to be endured as recurrent infirmities of the body politic which medication of one kind or another would soothe if not cure. Our attitude towards war itself differed from this only in degree. War was a more terrible calamity to endure, but the eventual and ultimate triumph of peace was foreordained in our thinking.

These were the illusions of a more comfortable era. Insofar as they were born of an optimistic faith in the infinite capabilities of human nature, they may have served a useful purpose. But in most of our people, they bred complacency and resignation. They developed intellectual apathy instead of alertness, moral languor instead of assertiveness. The philosophy of "God's in His heaven, all's right with the world," which suited the Oriental temperament, was embraced with uncritical enthusiasm.

Today, that "best of all possible worlds," wherein dwelt a previous generation comforted by its illusions, has been rudely shattered. We live in a very real world with no guarantees of any kind except those that accrue to every man or every nation as reward for effort actually expended and for work actually done. It is a world which has made it plain to all that it owes no one a living, that freedom is not necessarily invincible, that progress is not inevitable, that peace is not to be had by waiting, that human survival may not be left to accident or chance.

I should perhaps not speak to you in such blunt and uninspiring terms on your commencement day. But if commencement means what it should, then it is certainly better, on this day of your coming out into the workaday world, that you know what kind of a world you are getting into, the better to meet its exactions and impositions. Forewarned is forearmed.

There is another reason why you must discard the rose-tinted glasses even as you revel in the joy of your graduation. The margin of personal success and national safety has become dangerously narrow. There is no time to be lost in wishful thinking. There is only time enough to recognize that this narrow margin exists and to work within its limits until they can be pushed outward by constant personal effort and national endeavor.

I have laid stress on personal effort because it is natural for those who, like the great majority of you, are young or working students, to measure achievement in terms of personal success. It is equally natural that they should measure success in terms of securing a job, making a living, and getting on in the world. It has always been thus and it is still so today. The only difference—and it is a very important difference—is that the world has become less hospitable to struggling and ambitious youth than it used to be.

Throughout the world as a whole, this has been due to a variety of causes including over-population, diminishing resources, the increasingly acute competition among individuals for a living, social insecurity, political instability, armed disturbance, the disruption of trade, the severe economic dislocation brought on by the last war, and the fear of a new war which has hampered the normal pursuits of the people and imposed upon them the crushing burden of armaments. In our country, all these unfavorable con-

ditions exist in a measure with the exception of the first two. It is of importance to note that our country is exempt precisely from those conditions which are more or less of a permanent character and are therefore difficult to remedy. We have abundant resources and living space enough to absorb the pressure of an increasing population in any foreseeable future. On the other hand, we share with the rest of the world the temporarily political and economic conditions arising from the virtual anarchy of the postwar period and the haunting fear of a far more terrible war than the last.

This is the kind of world which you are about to enter. There are many things wrong with it, and it is definitely not the best of all possible worlds. But it is the only world we have, and we must put up with it until we can make it better.

Yet, even in this kind of world, we must consider our country and ourselves as rather more fortunate than many others. If there is want and privation among us, it is not the dreary, oppressive, soul-twisting sort that you find in the exhausted and over-populated lands. We have fertile land for all who will apply themselves to this primary source of the national wealth. We shall soon produce food staples sufficient for our needs, and our principal export commodities are approaching normal production. We have the possibilities of a modest industrial development that will create jobs for our people and provide us with a substantial portion of our national requirements in manufactured goods. Our financial reserves are increasing again, thanks to the controls that have been imposed and are still in operation.

What I am trying to show is that the ills which beset our particular corner of the world are susceptible of solution by peaceful and orderly efforts aided at home by civil obedience and outside by men of good will. The problems of disrupted trade, economic dislocation, and fear of a new war can be solved only by methods of international cooperation. By direct government-to-government action or through the efforts of the United Nations and its various agencies, these problems are being studied and remedies proposed. That our Government is taking active part in this extremely important undertaking is well known to you. But this policy can be successfully prosecuted only with the enlightened encouragement and effective support of our people.

The problems of social insecurity, political instability, and armed disturbance are not peculiar to our country. But they are the sort of problems that will be solved only by our own efforts, by all of us working together as a team, by the people supporting the Government earnestly and faithfully in its endeavors to promote the general welfare. For, in a democracy, the people and the Government are one, and it is a mistake for the citizens to stand apart

from the Government as if it were an entity distinct and separate from themselves.

From the forum of this great University, I make this appeal to reason and common sense. For it is appropriate that in this temple of learning we should stifle the strident voice of passion and employ only the measured accents of intelligence and truth. I ask you to look at the facts objectively and dispassionately in order that you may properly discern the good and the evil, and thus bring truth into better focus for the benefit of the unenlightened.

Let us consider some of the evils which we are uprooting now, like nepotism and bribery, graft and corruption. We must be honest with ourselves and admit that these are symptoms of a moral weakness that has long remained uncorrected. They are our heritage from pre-existing social systems and may not be imputed to any single generation, much less to any particular government administration. God knows that I, for one, have been doing my best to rid this Government of these evils, sacrificing friends and supporters to perform my sworn duty as head of this nation. But we must realize that these evils cannot be eradicated overnight, however hard we try. Only by constant vigilance and the systematic reconstruction of the national character, the fundamental renovation of the national soul, and the inculcation of a high sense of loyalty to public trust in men elected or appointed to public office, can we hope to eliminate eventually this scourge which afflicts us. The redemption of the race from this burden of sin can be more definitely accomplished by and through the younger generation by itself accepting its part of the task as we, the older, do our own. I therefore enjoin them to pick up this challenge right now. They must refuse from the beginning to associate with people of questionable character for in the long run and in the eyes of God and man it is people of unimpeachable character that achieve real success in this world.

Another instance is the exercise of civil liberties. Ours is a free country and the civil liberties guaranteed by our Constitution are in full force. There shall be no undue impairment of these freedoms so long as I am President. One of the greatest of these freedoms is the right of free speech, and its corollary, the right to criticize the Government.

But the exercise of this right entails certain obligations. Whoever wields the weapon of criticism has the obligation to do so in good faith, to know all the facts and to give them without malice and without prejudice, and above all, without sacrificing the very name, dignity and prestige of the nation and our people.

Criticism is one of the supreme prerogatives of the citizens of a democracy. But criticism must begin with self-criticism, and in a democracy it is best and most effective

when it assumes this character. By this I mean that the critic must come forward with clean hands. He must start from the premise that as a loyal citizen he is himself directly involved in the object of his criticism, that he accepts his role as a participant and not as mere spectator of the drama of our national life, that he is willing to assume his share of the responsibility for the evil as well as the good that is to be found therein. Only by showing such an attitude is the critic morally justified in exercising this fundamental right and entitled to be heard by all men of good will. Otherwise, criticism becomes irresponsible fault-finding, an appeal to passion, and an incitement to hysteria.

I must ask you especially to beware of the embittered and disillusioned who like to sulk in the Olympian heights and would not see anything but evil in others or speak except in a voice of dire prophecy and acidulous condemnation.

Whenever evil and misfortune befall our nation, they are content to come out and say: "I told you so!" They seem to be gratified when their gloomy predictions come true. They seem to derive satisfaction from the unhappiness for our people. They will point the finger of scorn at the Government, but will not lift a finger to assuage the misfortune or remedy the evil, not even if their own towns and homes are being burned and sacked and their innocent brethren killed before their very eyes. They are not unlike rocks that have fallen from the mountain-side to the river-bed where they obstruct the flow of the current and gather sediment and dirt, or the water-lilies that grow and flourish in the placid waters but at the same time clog the stream of our national life.

I challenge these men to come forward and, with all sincerity and determination, according to their repeated professions of love of country and readiness to defend, protect and promote our people's welfare, offer their shoulders to the national wheel and thus help strengthen, with their avowed intellectual and moral vigor, their own nation which they claim is weakening. Our people have a right to expect that they be ready to assume their patriotic role in accordance with their avowals. This is the best test of their real love of country and their fellowmen, tens of thousands of whom are now sufferring because of the apparent withholding of the former's cooperation in the establishment of domestic tranquility so necessary to our national security.

My friends: I have spoken to you with candor. I call upon the sons and daughters of this University, as I call upon all the elements of the nations, to lend their talent and their genius to the great task of building up this nation. No group of men considers itself adequate to undertake this tremendous task alone nor to have the monopoly of clearness of vision and patriotism.

Our task is in progress, so it is not as if you will start from scratch. Behind you lie many historic milestones marking the objectives our people have already achieved: nationalism, self-government and democracy, freedom and independence, international prestige and personality. But before us lie other goals: economic sufficiency and development, domestic tranquility, and national security.

I summon you to the unfinished task of making this Republic the happy home of a loyal and contented people. We need your strength and your vision to carry on this work. After all, this edifice which is rising will be your dwelling place and your children's long after we are gone. We who are older are building for tomorrow, and tomorrow is yours.

The young have vision and the old have dreams. It will be a noble mansion that shall rise on the blueprint of your vision and our dream. But between the laying of the cornerstone and the finished structure lie many years of unremitting labor—the piling of stone on stone—until the building is completed.

Give us of the abundance of your energy, of the quickness of your intelligence, of the purity of your moral sense, and of the freshness of your vision, that this task may be done in the spirit that has made our race endure through the centuries, rising by painful degrees from subjection to freedom and dignified nationhood.

And may I repeat what I said on my inauguration: "Help me always to do the right thing. Help me build for our people a new reputation for honesty and fair dealing. Help me establish a new integrity in our thinking, in our words, in our deeds. Let us be men, as the best of our breed have tried to be. Let us be true to ourselves so that we cannot be false to any man or any people. Then we can know the right thing and I, as your servant, can do the right thing for all the world to judge."

In return I renew my pledge to consecrate the rest of my life to your welfare and happiness and that of our people.

The President's Eighteenth Monthly Radio Chat delivered at the Guest House, Baguio City, April 15, 1950:

My Fellow Countrymen:

Today marks the second anniversary of the death of the late President Manuel Roxas. It also marks the completion of two years of my stewardship of our national affairs. In wisdom and in brilliance of mind President Roxas was the peer of the best that any country has produced. He had a noble vision of what our nation should be. As the first President of the Republic, he gave freely of himself in order that the measures looking towards the realization of that vision might be initiated.

On this day of solemn commemoration it is fitting that we look back to see how much of the task we set out to do

has been accomplished, and rededicate ourselves to the completion of that which still remains to be done. The best tribute we can render to President Roxas' memory is to carry on the work that he began.

In an address I gave this afternoon to the graduating classes of the Far Eastern University, I had occasion to dwell on our efforts to establish domestic tranquility and to eradicate corruption in the Government. It may not be surprising that at this very moment you will hear my address being broadcast while I am also delivering this radio chat to you. I would like to use our time this evening to review our work on the development of the national economy, especially in the question of production, not in terms of mere planning but in actual accomplishments as a result thereof.

It should now be trite to state that when we took over the reins of government in 1946 our country was literally prostrate from the physical destruction we sustained from the war. Production activity in all industries except copra had been paralyzed. There was no base upon which government revenues could be collected. The Government was consequently operating almost consistently on deficits since then. Living costs, especially for the wage-earner, were very high. Destitution during the occupation led to a tremendous pressure for consumption goods upon liberation. A large circulation of money had developed as a result of United States war expenditures in the Philippines. Because of destroyed production facilities on the one hand, and the great demand for consumption commodities on the other, this circulation only helped to generate an uncontrolled flow of unprecedented imports. So large were our imports that payments for them not only counterbalanced our money receipts from abroad but also actually began cutting into our exchange reserves.

With characteristic vigor, President Roxas addressed himself to these problems. Banking and credit institutions were rehabilitated. To set the productive processes in motion, crop loans were immediately granted. The former Agricultural and Industrial Bank was reorganized into the Rehabilitation Finance Corporation and provided ample capitalization to enable it to meet the purpose of its reorganization. A budgetary loan was secured from the United States to assist governmental operations. Surveys of the country's financial, agricultural, industrial, power, transport and communications, and other problems were conducted. The rebuilding of our destroyed productive facilities was started. At his death, he had broadly outlined the plans for the rehabilitation and development of the national economy and had taken the steps to organize the instrumentalities to implement these plans.

Where do we stand today, two years after his death? That I would like in general manner to dwell upon in these

few moments remaining of my allotted time. Upon my assumption of office, I conceived it to be my duty to carry forward the great work he had left unfinished, and invigorate it. The rehabilitation of our productive facilities had been slow while our consumption imports were increasing at a fast pace. The gap between our payments for imports and our receipts for exports was widening. Our external reserves were declining at an alarming rate. Our revenue collection activities had produced satisfactory results but they could not keep pace with the ever-increasing demand for elemental public service which the Government was in duty bound to meet.

We, therefore, embarked upon a policy of coordinated, total economic mobilization program. It sounds ambitious, but we have just made it a decided start. Legislation that would enable the Government to accelerate the rehabilitation of our productive industries was secured. The Central Bank was organized. Priorities were established to ensure the judicious use of funds for economic development. Studies made showed that the restoration of our productive capacity at least to pre-war levels would solve our difficulties in external finance.

I have, therefore, seen to it that the use of all available development funds be geared to that purpose. I have authorized the release of ₱385,000,000 for the rehabilitation principally of rice, corn, coconut, sugar, abaca, tobacco, ramie, jute, fishery, forestry, livestock, transport and communications, mining, and other industries.

As a result, we have already exceeded pre-war production levels in coconut and coconut products, pineapple, lumber, chromite, and manganese. We are reaching out for pre-war levels in sugar, abaca, gold, tobacco, forest products, embroideries, iron ore, copper, and cement.

The production of rice, corn, beans and vegetables, cacao and coffee, fruits and nuts, root and other food crops was at the lowest level of 2,500,000 metric tons in 1946. Last year our production increased to nearly 4,000,000 metric tons, already 13 per cent above the pre-war level of 1938, the peak year. Our rice production of 1,600,000 metric tons in 1946 rose to 2,500,000 metric tons in 1949, already in excess of pre-war production. So, although our population today is almost 4,000,000, or 25 per cent more than that of a decade ago, we have already produced 89 per cent of our total consumption requirements with our present population. Before the war, when we were only 16,000,000, our highest production barely reached 75 per cent of our consumption requirements.

Our corn production rose from 331,000 metric tons in 1946 to 534,000 metric tons in 1949, only 7 per cent below the 1940 level when our country was already self-sufficient in corn.

In beans and vegetables, we have made similar progress, increasing production to 61,000 metric tons in 1949, 153 per cent of the pre-war level. In the same year, however, we still imported 32,000 metric tons of fresh cabbages, garlics, onions, asparagus, cauliflower, and a score of other items which this year we had to place under import control to further stimulate local production.

In fruits and nuts, we produced 280,000 metric tons last year, 8 per cent above the highest level in 1938. In spite of that, however, we still imported ₱26,000,000 worth of fresh oranges, apples, grapes, pears, and similar fruits. I could continue citing examples of increase in production in the number of our carabaos, our cattle, our hogs, and our poultry. Sufficient it is to say that in all these items we have decidedly increased our production and I foresee that in the near future, we will be self-sufficient in supply in our consumption of all these products, especially with regards to hogs, poultry, etc.

In fish, our pre-war production of 271,000 metric tons went down to 47,000 metric tons in 1946. We have since progressed very substantially in this direction, increasing our production to 227,000 metric tons in 1949, although still only 84 per cent of the 1940 level. A notable feature in this respect, however, is the fact that today the industry is almost exclusively in the hands of our own nationals, whereas before the war we hardly had a 15 per cent participation in it. We must continue in our efforts towards self-sufficiency in this product, for in 1949 we still imported 43,000,000 kilograms of fish products valued at around 34 million pesos.

In transportation, notable accomplishments have also been made. The 1941 line of the Manila Railroad Company extending 1,140 kilometers had been so badly damaged that only 480 kilometers could be rehabilitated with wooden bridges by the United States Army up to 1946. In 1949 we had restored 902 kilometers of track line and temporary bridges were all practically replaced by permanent constructions. Rolling stock of the Company, which suffered 70 per cent destruction, is gradually being brought back to pre-war standing.

In road construction, we have increased our kilometrage during the past two years by 14.8 per cent pre-war, from 22,000 kilometers in 1940 to 26,354 in 1949.

Inter-island shipping was being done before the war on 1,700 registered steamers, steam launches, and other vessels, with a net tonnage of 96,800. In 1949 the number had increased to 3,898 with an aggregate tonnage of 220,000.

In the field of air transportation, a remarkable growth during the past three years has taken place. The Philippine Air Lines has not only increased the number of passengers tremendously, but has made a tremendous publicity

to the credit and prestige of the Philippines all throughout the world because of its efficient service.

In building construction, it is sufficient to state that in 1949 we were constructing 5½ times more buildings than in 1937. As I said just a moment ago, the time allotted me this evening does not permit me to tire you with more statistics regarding our progress in land development, irrigation, general trade and commerce matters, etc., but it must be sufficient to say that despite the much publicized troubled conditions brought about by keen political conflicts ever since we established our new Republic and the armed disturbances every now and then, we have made remarkable strides in our economic development and have kept our hands steady at the production wheel.

We have reason to face our future with great confidence. We have succeeded in stopping the decline of our international reserves. The over-all production level is on the increase, not only in food crops to the point of near self-sufficiency, but also in a number of export industries.

We are definitely increasing the production of the principal items which enter the worker's cost of living, such as rice, corn and other cereals, vegetables, poultry, fish. I can say safely that nowhere in the Philippines is there starvation, with sufficiency of food and the probability of increased production thereof. And the prices of uncontrolled import articles and those locally produced have begun to settle down to normal after opportunistic profiteering has calmed down.

With the drain in our international reserves arrested, black-marketing of dollars and other activities calculated to undermine the value of our currency has subsided. And with our control measures a more balanced and basically stronger economy is beginning to evolve. Thus, I express the feeling that we have been able to weather the major crisis we expected.

I am confident that with more civic spirit, sound common sense, and determination of our people to work harder and coopèrate more energetically in the realization of our development program, we shall withstand the severe tests of our economic stability. The essential thing is for all of us during these critical moments to exert our utmost to ensure domestic tranquility so that we can concentrate our attention on our productive efforts.

My fellow countrymen, I make this as a last appeal. All of you be calm. Be guided by the strongest civic spirit, and cooperate with the Government in its effort to establish peace and order to insure domestic tranquility so that we can secure also not only our economic security but the stability of the Republic, whose liberty and freedom we now enjoy under its blessing.

Commencement Address of Vice-President Fernando Lopez before the Feati Institute of Technology, Manila, on April 22, 1950:

Ladies and Gentlemen:

Industry is the right hand of fortune. Technology is the science of industry, the mainspring of industrial knowledge and the springboard of a country's progress and prosperity. Technical knowledge may be an instrument for good or for evil; it may be a contrivance for nation-building or for destruction of a race; it may be a weapon for the realization of world peace or the subversion of civilization. In the hands of the good, technological knowledge may be used for material advancement or economic stability of a nation; in the hands of the wicked, it may be used for the elimination of humanity.

America is today the greatest country of the world because of her technical "know how." Russia has risen as a threat to democracy because of the skill and training of her technical men. David E. Lilienthal of the United States Atomic Energy Commission has said that "technology applied for human welfare can bring not only material well-being but it can also nourish the spirit of man."

We are living today in an age of the atoms. Atomic energy has ceased to be a complex formula written on secret papers. It has even ceased to be a secret formula. Nations of the world interlocked for power and domination are now working in laboratories, in schools and universities, in hospitals and factories, in mining fields and research areas, exploring the hydrogen and the atomic unknown. Through technical transitions, weapons more deadly than the atomic and the hydrogen bombs may yet be produced by human ingenuity. Knowledge is a powerful weapon. Technical knowledge is more than that. The advancing knowledge of mankind may unlock new discoveries because sources of civilization cannot be exhausted. And when nations of different ideologies clash for the preservation of their respective doctrines, there is nothing left for mankind but faith—faith in, and hope for, the goodness and goodwill of those who hold the technical knowledge of the universe. "Love may be dearer than life itself, fame may be dearer than glittering gold, but faith, is dearer than both of them. Through the brotherhood and understanding of men, we can live on this faith,—faith that may triumph over our fears; faith in ourselves, faith in our fellowmen and faith in God."

The Philippines is fast advancing in the training of technical men. Our economic and industrial mobilization programs cannot, and will not succeed without technical knowledge. It is inspiring and reassuring to note that some institutions of learning in our country are dedicating themselves to the development of the technical potentialities

of our young men and young women. This should be encouraged by the public and the Government.

Graduates of the Feati Institute of Technology: You stand today as the proud recipients of that honor and admiration which you highly deserve on the occasion of your graduation tonight. You have chosen a career that is the lifeblood of our country's progress, our economic stability and the enduring life of our infant Republic. Yours is the renunciation of glory and fame for public service. The crying need of the hour is the bringing up of men like you. In these times of industrial progress and economic rehabilitation in the midst of socio-economic ills and socio-political ailments, we need men of science, men of technical skill; men like you who are the silent builders of our war-torn industries and undeveloped natural resources, men with self-reliance who do not seek honor nor glory for themselves but who labor ceaselessly and silently for the good of all.

My young friends, you fully deserve your diplomas because you have acquired your technical knowledge and skill through sheer merit and hard work, without the benefit of "pull" or extraneous influences from within and without this institution. Yours is an education rightly bestowed; you have chosen this avocation with a far-reaching outlook for the future. Ambition is like a torrent that never looks back at its wake. Enhanced by your ambition and guided by your faith in yourselves, coupled with your matchless determination to succeed, you are now prepared to pass through the portals of this great institution of learning to join a noble crusade to bring prosperity and stability in our country and happiness and contentment to our people. Remember that a man is greatest who rises by his own merit. Your knowledge and rigid training in aeronautical engineering, in mechanical engineering, in electrical engineering, in civil engineering, in airline operations and maintenance engineering, in radio engineering, in radio operator, radio mechanic, radio shop, refrigeration courses and other technical trades are rich and valuable preparations for the heavy task that lies ahead of you. At this juncture, I wish to congratulate the board of trustees, the administration and the members of the faculty of the Feati Institute of Technology for this great contribution to our country by providing trained personnel in the field of industry, economics and scientific research.

My Friends, Ladies and Gentlemen: I shall not confine myself to painting a rosy picture of the life that awaits you. I cannot limit myself to counseling you on what lies yonder in the dark against the blaze of light. I have closely associated myself with the education and fortunes of our youth, and I will be recreant to my bounden duty as a public servant, should I restrain myself from giving to you the true picture of the plight of our youth after their graduation. I have said before on one occasion that edu-

cation is a priceless possession that cannot be taken away from the possessor. It cannot be bought, it cannot be sold nor bartered, it means the embodiment of the blood and flesh of your parents—their self-denial and sacrificial waiting; it means the unselfish energies and tears of your mentors, the prestige and honor of your Alma Mater; it means your name and your life. You worked and slaved for it with just pride—in justice you should be amply rewarded. But what an ugly and unfortunate anachronism! With diplomas in hand, graduates start hunting for jobs and they become disillusioned and discouraged, either because there are no existing vacancies or because they are not backed up by political moguls or by the men in power. As a graduate finally lands a job, most often he is bound to rot in his position, unless he is recommended for promotion by the great or near-great in or behind the Government. And usually a humble applicant does not get any recommendation or a small employee a deserved promotion unless he is the co-provinciano, the relative, the "padrino," the "compadre" or the political protege of the powers that be.

My friends, I wish to be frank and out-spoken in the miserable situation of our small employees, of those who do not have enough political strings in the Government These hard-working, bread-earners of the family are graduates of our schools and universities. Of what use are their educational attainments if their aspirations and dreams are frustrated or spoliated. I have observed that nepotism and favoritism and political regionalism have been rampant for many years and have developed into a problem of serious proportions today, resulting in discontent and unbridled disillusionment of our government employees. A civil service employee with long service in the Government, who has demonstrated his worth and efficiency may not get a promotion to a vacant position just because a "politico" has a new protege. Everytime a vacancy is offered to a misfit, one is pleased but thousands are displeased. And to aggravate the situation, graft, corruption and collusions have been committed even by those who occupy positions of prominence in our Government. We cannot expect loyalty, efficiency and honesty of the ordinary employees when their immediate superiors and other high officials in the Government are dishonest and irresponsible. I conceive this to be one of the fundamental causes of the unrest and disorder prevailing in our country, and unless we take steps to cleanse and purify our Government and restore the confidence of our people in the same, discontent will continue to flourish and spread among the masses of our population.

Peace and order in our country has developed into a politico-social clash between the privileged and the masses. The masses of our people have a right to demand to be free and equal with all classes—free and equal as the waves

of the sea and the enraptured air above. When small men are crushed to earth by the more fortunate, they lose all their hope and their faith and may join the ranks of the discontented.

We talk so much about austerity, but the masses complain that there is prosperity among a few. Material austerity is not only the call of the moment. I believe in austerity of the mind, austerity of the heart and austerity of the soul. Whether it is the heart to conceive or the mind to perceive or the soul to search, the conscience of the governed should be made the basis of good government. Between craft and credulity, the voice of reason is stifled and prostrated; between graft and honesty, the voice of the people is trampled and frustrated. Hungry ambition for power is not austerity of the mind. Magnanimity in political rewards is not austerity of the heart; political corruption or political persecution is not austerity of the soul. Austerity of the mind means freedom from self-seeking designs and freedom from envy. Austerity of the heart means freedom from vacillation and inconsistent goodness. Austerity of the soul means freedom to enjoy faith and love for our fellowmen.

My friends, I believe that this approach to austerity should begin from our government officials. Our government officials should treat their subordinates with justice and equality. Our political leaders should not crush the hopes of the struggling employees. The government employees belong to the public and public necessity is more important than political necessity. Let us make our bureaus, our offices and our corporations hallowed places for justice. Under the majestic protection of the law, let us shelter our small government employees. Our small employees should have complete faith and confidence in the Government so that the rest of the people may follow. Dishonest and erring officials should be severely dealt with. Political rivalries should be forgotten and political feuds in a democracy should be on the high level of principle and not of the heart. I believe in the maxim that he serves his party first who serves his country best. We cannot just give up for a political party what is intended for mankind.

Members of the graduating classes—I have gone out of the way to take you ahead to a destination you are about to explore. I hope you will transmit to the masses of our people, your strength, your knowledge and your reason. The foundation of every state is the rigid education of our youth. The proper assistance that youth can give to the education of our masses is the best gift that you can give to our nation. Spread the benefits of your education to the greatest number of our people because in so doing, you shall strengthen the vitality of our nation and the future stability of our Government.

DECISIONS OF THE SUPREME COURT

[No. L-1516. December 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RICARDO DE LOS REYES, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE FOR THE STATE MUST BE BELIEVED WHEN NO MOTIVE IS SHOWN TO FALSIFY IT.—No base motive has been shown why the witness for the prosecution should falsely impute to the accused the commission of so heinous a crime. The allegation of the accused that P. P. told him that the detectives induced her to testify against the appellant on the penalty of being confined is too farfetched to merit a serious consideration. The accused himself testified that before his arrest and his signing of Exhibit J, there was no ill-feeling between him and the detectives, with whom he was in good terms. Appellant's allegations that he was maltreated before his signing Exhibit J has been belied by detective B. C. T.
2. ID.; ID.; WITNESS; ADMISSION OF WITNESS IN COURT AGAINST PENAL INTEREST TENDING TO EXONERATE ACCUSED.—The testimony of A. R., the savior who volunteered his testimony to rescue the accused by owning responsibility for the killing of N. L., offers us a story which by its inherent inverisimility, cannot be believed. His pose of heroism, his volunteering as a knightly champion to save an innocent, his sublime indifference towards the death penalty that, as adverted to by the trial court, might have been imposed upon him for assuming responsibility for the murder, exhibit such an unusual grandeur of human soul highly unbelievable in a prison inmate who, as in R's case, must be guilty of a serious offense, as he has been undergoing imprisonment since 1943, several years before he testified in court. He tried unsuccessfully to show his motives for killing N. L. and his story about his escapes from imprisonment, his efforts to locate L, and the manner he killed him, seems rather to belong more to the realm of fiction than to a narration of the truth.

APPEAL from a judgment of the Court of First Instance of Manila. Dinglasan, J.

The facts are stated in the opinion of the court.

Bustos & Bustos for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jesus A. Avanceña* for appellee.

PERFECTO, *J.:*

The witnesses for the prosecution testified in substance as follows:

1. Dr. Angelo Singian, 34, married, physician, testified that on October 30, 1946, he performed an autopsy on the body of Narciso Lapus. The cause of his death was a gun shot wound through the head fracturing the occipital and cervical vertebrae and contusing the medulla oblongata and upper cervical spinal cord. (1). Exhibit A is the carbon copy of the report he made of the autopsy. Exhib-

its B, B-1 and B-2 are photographs of the deceased. The bullet went through the skull. (2). The direction of the bullet was upwards indicating that the assailant was on a lower level than the victim and that the assailant was behind the victim and at a lower level. The deceased was hit only once with a bullet. The wound was caused by a .45 caliber bullet. (3). Due to the absence of gun powder on the wound, the revolver must have been fired beyond three feet from the point of entrance. The bullet must have been fired beyond ten meters but within less than twenty meters. The slant of the direction is approximately sixty degrees. Less than forty-five degrees from the horizontal. The bullet deviated from the point of entrance to the left. (4).

Exhibit B, as admitted by the accused, is the certificate of registration issued to him to carry a firearm. Exhibit H is a true copy of his appointment as special agent of the Manila Police Department, and Exhibit I is his identification card with authority to carry a firearm, automatic pistol, caliber .45, serial No. 1452520.

2. Vicente Bautista, 41, married, a detective in the Manila Police Department, testified that he investigated the accused who made statement Exhibit J. (6). Exhibit C is a pistol that the witness had taken from the possession of the accused, the same described as Ithaca, caliber .45, serial No. 1452520. He took it from the accused when the latter was placed under arrest on December 2, 1946. The accused was present on the reconstruction of the crime described in Exhibit J. Exhibit B-4 is the picture of the reconstruction, and it depicts the corner of F. de Leon and Bambang Streets where the crime was committed. (7.) Exhibit K is another picture of the reconstruction. The accused told him that when he started to follow the trio, Estrella Carpio, Lapus and the maid, he did himself on the third stair of the Bambang market facing eastward. (8). The accused took part voluntarily in the reconstruction of the shooting. (10).

3. Avelino D. Aquino, married, 27, patrolman, testified that he was the one who took the photograph Exhibit D, the same as Exhibit B-1. (11).

4. Estrella Carpio, 30, widow, 1416 Felina Street, Sampaloc, testified that she lived for a long time with Narciso Lapus as husband and wife. (18). They were not legally married. He was shot on October 29, 1946, at Bambang extension, between 10 and 11 o'clock at night. Before that date they were living in Bambang. She lived with him up to October 29, 1946. Paula Perez is her townmate. She asked her if she knew a secret serviceman because she wanted her husband, Narciso Lapus, arrested, because he threatened to kill her, her mother, her relatives and her children, and he also told her that if ever he would be

sentenced for life he would not leave her alive. The deceased was charged with treason in the People's Court. (20). Paula Perez gave her the name of Ricardo de los Reyes as special agent, and the witness had a conversation with him in the house of Paula Perez. She asked him if he could arrest somebody doing wrong, because Lapus intended to kill her and her relatives. (21). The accused answered that he could arrest him for being a Huk. The accused told her, "Why are you going to have him arrested? The best thing is to have him finished because if he is arrested he might kill you?" (22). The witness told him, "Arrest him but do not kill him." The witness met the accused twice prior to October 29, 1946. The first meeting was about the arrest. The second meeting took place after the death of Narciso Lapus. (23). On October 29, 1946, the witness, Narciso Lapus and her maid, Irene Legaspi, left the Avenue Theater at 10:30 at night. They passed along Rizal Avenue. "We passed behind the Bambang market and while we were there I saw Ricardo de los Reyes near the door of the barber shop. I could not asked him what he would do because I was afraid of my husband who is a jealous man. As we were turning near the drug store, I heard a shot. Before we reached the corner, my husband had his arms around my shoulder, but when we turned, the maid went ahead and then Mr. Lapus." (24. Before he was shot, her husband was one meter away from her. "I heard the shot. I looked back. I saw Ricardo de los Reyes who had his back towards us and he was running away. After I heard the shot, Narciso Lapus fell," and he died. (26). "I shouted and I cried and I did not know what to do. I went to him and I went away from him and came to him again. The secret servicemen arrived." When she first saw the accused, he was at about four meters. He was carrying a revolver. (27). After the burial of Lapus, "Ricardo de los Reyes and I talked in the house of Paula after Paula called me." He asked her, "Do you know who killed him?" and she said no. I said, "there is nobody who killed him but I." She asked him, "why did you kill him, when I merely told you to arrest him, why did you kill him?" He answered it is better that way because "now you are free." "I just kept quiet and it just occurred to me that he might be in love with me. He was toying with his revolver then, as though at that moment he wanted to abuse me. (32). What he wanted to happen happened because I was afraid of him. As he kept toying with the revolver he abused me. He embraced me and abused me. He embraced me and kissed me until I was forced to lie down and he said, 'It cannot be or I am going to kill you,' and it happened, and we had sexual intercourse. Then after that he asked me if I had any other whom I wanted to kill and I told

him, 'I did not tell you to kill Mr. Lapus. I only told you to arrest him.' He went away and then Paula Perez arrived." (33). When the accused asked her who killed her husband, she answered that she did not know because "I did not want to tell him that it was he who killed my husband." I was certain that he was the one running but I wanted to get his words that it was he who killed him. I did not have the courage to tell them [police] that it was he who killed Narciso Lapus because he might kill me also, but after he was confined in jail, I told the police." (34). When she was investigated, she did not tell the policemen that it was the accused who killed her husband "because he was still at large then." Although she was afraid of the accused, she went to the house of Paula alone, "I acceded to his request because I was afraid that if I did not, there might be the probability that he might kill me. I wanted to befriend him as long as he was out. I wanted his arrest but I was thinking of the way by which he would be arrested without his knowing that it was I who made his arrest. He had been telling the people in the neighborhood that he was going to kill whoever reported the matter to the police." Lapus was married with Concha but they divorced in the United States. (35–36). The wife of Narciso Lapus knew that she was living with him. On October 29, 1946, the witness has been living with the deceased about three months after his release as detention prisoner. He was indicted for treason and was released on bail. (37). They were living at Felix de Leon Street (1112). The accused was living in the same street, with three or four houses between his and the witness'. (38). She met the accused for the first time a little less than a month before the killing. The witness was married with Hilarion Paz of Pelilia, Rizal, before the war. She was married with him on November 3, 1932. (39). She could not denounce her husband to the policemen, because of jealousy. Lapus used to lock her up in the house. He was jealous even with girls. She never went to church, to the market or even to shop. (40). She could leave the house with him always. She left the house only once when she talked with the accused for a short time. She was left with her mother and sisters. She would not dare leave the house because she was afraid of him. (41). Her agreement with the accused was that he was to arrest only Lapus. There was no agreement as to the date. (43). After the killing, the witness was detained for three days during which she was investigated and she said that she did not know who shot her husband. (44). She did not tell them who the killer was until the accused was confined. She was afraid of him. "As a matter of fact he threatened to kill me." (46). When the accused was already arrested, the witness saw him once. "He approached

me and whispered to me whether I was the one who pointed to him, and I said no, because he was going to kill me." (47). She saw the accused in the house of Paula Perez three weeks after the death of Lapus. She had a child with Lapus who died before the Americans came. (48). Before she met the accused in the house of Paula Perez, detective Vera Cruz told her, about two weeks after the death of Lapus, that somebody reported to him that it was Ricardo de los Reyes who killed her husband, and she told him, "Alright, you arrest him and then I will tell you everything." (50). The accused was arrested two weeks after that interview with Vera Cruz. (51). After the shooting, the witness saw the accused running, as the place was bright enough. There was light from the corner and from a house. (53). When she saw the accused before the shooting, he was in a barber shop, at about ten meters from the place of the shooting. (55).

5. Amadeo M. Cabe, 42, married, Chief of the Criminal Investigation Laboratory, and ballistic expert, Philippine Army, testified that he made an investigation in connection with a .45 caliber pistol serial No. 1452520, Exhibit C, .45 caliber magazine Exhibit C–1 and an empty shell exhibit C–2. (57–58). Exhibit C–2 was discharged from the chamber of Exhibit C. "I fired three tests from Exhibit C, which are contained in an envelop, Exhibit D, and these tests were brought for comparison under the comparison microscope with Exhibit C–2 and under the microscope. I observed that the microscopic markings or lines imparted by the britch block of Exhibit C and the markings imparted by the firing pin destructor, extractor and ejector of Exhibit C were found to check with those appearing on Exhibit D." He prepared a micrograph of the tests and also of the shell Exhibit C–2 and it is marked as Exhibit E. (59).

6. Paula Perez, 42, married, market vendor, testified that on October 29, 1946, she was living at 1123 Felix de Leon Street, about 15 meters from the house of Estrella Carpio. (69). Once she met Estrella Carpio in the latter's house, and Estrella told her that her husband was a Huk and she asked her if she knew of a secret serviceman. The witness mentioned the accused, and Estrella asked that the man be introduced to her. (70). Estrella wanted her husband arrested because he had been threatening her. The accused met Estrella. They met for the second time before October 29, 1946. The witness did not know the object of their conversation as she left when they started talking because her child was crying. (71). After that second meeting, they met again, but the witness went again to her crying child when they started to talk. She does not remember if Estrella and the accused met again after October 29. After the death of Lapus, Estrella and the

accused met again in her house at the latter's instance. (71–72). She cannot say what happened then because she used to leave them when they started talking. (73). They talked for one hour, more or less. She brought her crying child to the street. (74). When Estrella was leaving, she noticed that her face was flushed and her hair was dishevelled. (75). Estrella looked sad. The accused left at the same time as Estrella. (76). The accused met Estrella in her house three times before the shooting. (84). The witness heard when Estrella asked the accused to arrest her husband. The mother of Estrella, Inda Angui, also said that Lapus was threatening them before he could be rearrested and confined. (84). The witness did not remember when the shooting took place. (88).

7. Ildefonso Labao, 27, married, detective, Manila, testified that they found in the scene of the shooting an empty shell, Exhibit C–2. (92, 93, 94).

The witnesses for the defense testified in substance as follows:

1. Alfonso Redoña, 27, single, confined in Muntinlupa, testified that he came to know Narciso Lapus in 1943 in Fort Santiago, when he was arrested with Pecto Redoña and Pedro Graten and taken to Fort Santiago. Upon arriving there, he saw Narciso Lapus and other Filipinos such as General Ricarte. Narciso Lapus is dead. "I killed him, because he had done something against me. When we were in Fort Santiago, he released my cousin. I was under the impression that he was responsible for his release. Five days afterwards, when my six companions and I escaped, I went directly to my house and found my cousin not there. I suspected it was Lapus who was responsible for the killing of my cousin. My cousin was a member of the guerrillas." (12). He was arrested in Pasay in June or August, 1943. He was taken to Fort Santiago and was investigated by Narciso Lapus. He was maltreated. He escaped after fifteen days' confinement in Fort Santiago. "We sawed the iron bars." (13). After he escaped, he looked for Narciso Lapus to kill him. In his first escape, he did not find him. After his second escape, he found him on October 29, 1946, at the corner of Bambang and Felix de Leon Streets at 11 o'clock at night. He was with two women. I followed him, then upon finding him in a place where it was half dark, I killed him by hitting him on the nape of his neck. I did not stop him. I merely approached him, pulled the trigger and hit the nape of his neck. I was very close, so much so, that the gun was very close to his neck. About three to four inches. Then I ran away. I looked back at him and saw that he was face downwards." He did not know Ricardo de los Reyes. The accused told him that he did not kill Narciso Lapus but he admitted killing

him because he was maltreated. "I told him he could send for me so that I might testify in his favor so that he may not be responsible for something he has not committed." The witness knows that murder is punishable by death. "Death does not mean anything to me so long as I can save an innocent man from suffering in jail." After killing Lapus, the witness went to Lucena. He came back to Manila in January and he was rearrested. In October, 1945, he was rearrested and taken back to Muntinlupa. Then he escaped again. "We grabbed the Thompson guns from the guards. During that escape, the guards came along with us up to Angustia Street. Upon reaching there, we told them to go back." He saw Lapus who "came from the Apolo Theater and was going on Calle Palomar. As he was walking along the street, I noticed he was near me, but I wanted to be sure, I got my gun from my pocket kept inside my coat and shot him when we arrived at a certain place." (15). "I knew one of the girls, the other one I do not know." The witness knew her by face but not by name. "I saw her once in Pasay, round face, Chinese eyes, she looked like a mestiza." When he shot Lapus, the two women ran away. They were walking ahead of him. The first time he saw Lapus was in Fort Santiago, the second time was in Muntinlupa. He was with Lapus in Muntinlupa around two months. He could not approach him because he was always with MP's. (16). He revealed his killing of Lapus to the accused and to nobody else. He did not reveal the killing when he was arrested, because at that time he did not know that somebody was being charged for killing Lapus. (17). When he shot Lapus, he was standing. (100). "Two revolvers were taken from my possession. One of them is the one he used and one is a German Lugger." They were taken from him when he was arrested on January 2, 1947. When he fired, the barrel was aiming upwards. (101).

2. Ricardo de los Reyes, 34, married, property inspector of the Manila City Hall, testified that he was once a special agent in the office of the Chief of Police. At the time of his arrest, he was a special agent of a private detective bureau whose name he does not remember anymore. At the same time he was a property inspector. (103). As agent of the private detective bureau, he was given a .45 caliber revolver. (104). He has been first lieutenant in the Ramsey Guerrilla. He served in the Philippine Army as staff sergeant. (105). He did not kill Narciso Lapus. He does not know anything about his killing in the evening of October 29, 1946. The only time he saw Lapus was when he was killed. Then, the witness was with the members of the homicide squad. (107). Between 10 and 11 at night, the accused went to a store near the corner of Magdalena and Mayhaligui Streets. Minutes later, there

was confusion. The crowd was moving towards the place. The police took "my companions to the police station and investigated them." One of those taken was "my nephew." After eating, the accused went to the Meisic Police Station to find out what happened and there he learned that something happened at the corner of Felix de Leon and Bambang Streets. The members of the homicide squad took a weapons carrier and went to the place "and I went with them to find out what happened in our place." (108). There, the accused took a look at the deceased. The accused was arrested on December 1 or 2. (109). "I do not know anything about this" [Exhibit J]. "I signed this document because of the maltreatment I received. I could not tell who were the persons who maltreated me because after they tied me, they let me lie on a table" (110). His eyes were covered by a man without two or three teeth, and the same man tied his hands. He felt fist blows and he asked why such things were done to him. "I saw a typewriter and some pieces of paper before my eyes were covered and I was beside a typewriter and I was asked if I could sign that typewritten paper. Because they were keeping on maltreating me, I could not sign anything." (111). Then he was taken to Muntinlupa. Because of chest pains, he asked a policeman if he could take him to a doctor or allow him to call a physician. He did not sign yet before he was taken to Muntinlupa. At 11 o'clock in the morning, when the accused was still not feeling well, he was taken in a jeep and was again maltreated. "Upon arriving in the office of the homicide squad, I decided that because I could no longer endure the bodily harm I decided to sign this document in which I was admitting my guilt because I knew that I could tell the truth to the authorities." (112). Pictures B–4, B–5, K and K–1 were taken because the accused could not do anything and, thinking about his children, he thought of doing everything that the policeman wanted him to do. Exhibit C–1 is not a magazine of his pistol. The bullets in the magazine are not his. His cartridges were red and on top "there was a sort of mark which I sawed." (113). One day, Paula Perez told the accused that her cousin wanted to talk to him. The accused went to the house of Paula Perez. Not long afterwards, Estrella Carpio, the wife of Narciso Lapus, arrived. "She herself approached me where I was seated. She told me to help her. To arrest her husband. I told her that I could not make any arrest because I was not authorized." (114). It is not true that he said to her that it was better for her husband to be liquidated. The place where the accused was eating, Calle Magdalena, at the time Lapus was killed, was about 400 yards from the place of the killing. It would take fifteen minutes to walk from one place to another. "There

is nothing I can say about" her testimony that the accused sent for her after the killing and admitted that he killed Lapus. (115). The accused saw the girl only once. It is not true that he had sexual intercourse with her. The accused and Paula Perez have been neighbors for about seven months. He had no troubles with her. (116). One day, when the accused met Paula Perez in court, she told him that she was taught by the secret servicemen and the policemen to testify against the accused, if otherwise, they would confine her in jail "and I said that in that case 'it is better that I kill you because if I would be penalized I would have been penalized for something which is true.'" In the night of October 29, 1946, the accused was carrying his pistol, Exhibit C, "I had that pistol with me all the time." (117). The accused knew many bad elements in the city. As to his appointment as special agent, "it was Don Pablo Angeles David who prepared my appointment and sent it to Manila." (118). Before the taking of Exhibit J, the accused had no trouble with any detective. (120). Baldomero Tiamsic is the detective who blindfolded and tied him. The accused cannot say why Estrella should harbor any ill-feeling against him when she asked him to help her "and I said I would help her." (121). At the time of the reconstruction of the crime, nobody was maltreating the accused. (122).

Baldomero C. Tiamsic, 40, married, detective, 142 Lardizabal Street, Manila, testifying as rebuttal witness for the prosecution, said that it is not true that he blindfolded the accused. Nothing was done to him. "As a matter of fact, when we were taking his statement his mistress (wife) was right there." The accused has not been maltreated. It is not true that his hands were tied. (124). When the accused signed Exhibit J, he was not under intimidation or duress. (125).

Angelo Singian, 34, physician, 125 Guipit Street, Manila, testified that having performed the autopsy of Narciso Lapus, he did not find any powder burns or powder around his wound. (126). When a bullet is fired at a close range at a person, it leaves marks of powder burns on the periphery of the wound. (127).

A careful study of the evidence on record convinces us that Estrella Carpio gave the true version as to how Narciso Lapus was killed on October 29, 1946, and it was appellant who fired the fatal shot. She has been corroborated by Paula Perez on the interview she had with the accused before and after the killing, in which the accused himself told Estrella that he was the one who killed Narciso Lapus, and was even offering to her his services to kill any other one she might have wanted killed. His earnestness in liquidating the deceased, although Estrella asked only for the latter's arrest, and in offering her

further services, was motivated by his desire of satisfying his lust on her, and as shown by the fact that in the last interview, he had sexual intercourse with her, although Estrella acceded to it only through fear as, at the time, the accused was toying with his firearms. Immediately after the interview, Paula Perez saw her face flushed with dishevelled hair. The accused himself corroborated Estrella Carpio in some way when he testified that, before the killing, he had an interview with Estrella who asked him to arrest Narciso Lapus, and in Exhibit J the accused admitted his having killed Narciso Lapus.

No base motive has been shown why the witness for the prosecution should falsely impute to the accused the commission of so heinous a crime. The allegation of the accused that Paula Perez told him that the detectives induced her to testify against the appellant on the penalty of being confined is too farfetched to merit a serious consideration. The accused himself testified that before his arrest and his signing of Exhibit J, there was no ill-feeling between him and the detectives, with whom he was in good terms. Appellant's allegations that he was maltreated before his signing Exhibit J has been belied by detective Baldomero C. Tiamsic.

The testimony of Alfonso Redoña, the savior who volunteered his testimony to rescue the accused by owning responsibility for the killing of Narciso Lapus, offers us a story which by its inherent inverisimility, cannot be believed. His pose of heroism, his volunteering as a knightly champion to save an innocent, his sublime indifference towards the death penalty that, as adverted to by the trial court, might have been imposed upon him for assuming responsibility for the murder, exhibit such an unusual grandeur of human soul highly unbelievable in a prison inmate who, as in Redoña's case, must be guilty of a serious offense, as he has been undergoing imprisonment since 1943, several years before he testified in court. He tried unsuccessfully to show his motives for killing Narciso Lapus and his story about his escapes from imprisonment, his efforts to locate Lapus, and the manner he killed him, seems rather to belong more to the realm of fiction than to a narration of the truth.

The trial court, finding appellant guilty of murder for the killing of Narciso Lapus, without any aggravating or mitigating circumstance, sentenced him to *reclusión perpetua*, to indemnify the heirs of the deceased in the sum of ₱2,000 and to pay the costs. The sentence being in accordance with the facts and the law, is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ., concur.*

Judgment affirmed.

[No. L–1622. December 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JUAN LANSANAS, defendant and appellant

1. CRIMINAL LAW; TREASON; MAKAPILI ORGANIZATION, ACTIVITIES OF ACCUSED IN; PURPOSES.—Evidence of accused's activities in the Makapili organization is sufficient to prove his adherence to the enemy, considering the purposes for which the organization was created, namely, "to accomplish the fulfillment of the obligations assumed by the Philippines in the Pact of Alliance with the Empire of Japan;" "to shed blood and sacrifice the lives of our people in order to eradicate Anglo-Saxon influence in East Asia;" "to collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines;" and "to fight the common enemies." (People *vs.* Adriano, L–477, June 30, 1947, 44 Off. Gaz., 4300.)
2. ID.; ID.; WITNESSES; DISCREPANCIES IN MINOR DETAILS; POSITIVE AND NEGATIVE TESTIMONY.—The fact that the said witnesses were not uniform on the points whether or not there were Japanese soldiers in the raiding party, or whether or not the persons arrested and confined included not only the males but some women and children, is not sufficient to entirely discredit their testimony, as the deficiency refers merely to minor details. Neither may the negative testimony of E. E., an alleged victim of the raid, to the effect that he did not see the appellant among the raiders prevail over the positive testimony of M. F. and T. V. who, moreover, were not shown to have had any improper motive in testifying against the appellant.
3. ID.; ID.; MITIGATING CIRCUMSTANCE; LACK OF INSTRUCTION OR EDUCATION.—Lack of instruction or education cannot be considered a mitigating circumstance in favor of the appellant, because love of country should be a natural feeling of every citizen, however unlettered or cultured he may be.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Manuel A. Concordia for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Antonio A. Torres* for appellee.

PARÁS, *J.:*

This is an appeal from a judgment of the People's Court (Second Division), finding the appellant guilty of treason and sentencing him to *reclusión perpetua* and its accessory penalties and to pay a fine of ten thousand pesos, plus the costs. Appellant's conviction was based only on counts V and VI of the information. The first charged the appellant with having enlisted, joined and served in the organization commonly known as Makapili. The second accused the appellant of having led and accompanied a patrol of Japanese soldiers and Makapilis to a raid in barrio Parian, municipality of Calamba, Province of Laguna, resulting in the arrest of all the male inhabitants of the barrio and their confinement in the Japanese garrison in Calamba for three days and two nights without

food, in retaliation for the killing of one of appellant's companions.

We will concede, following appellant's argument, that count V was not established in accordance with the two-witness rule, since only one witness (Marcial Flores) was specific in testifying that he knew the appellant to be a Makapili because he used to persuade people, in meetings held by him with others in different barrios, to join the Makapili organization. This is, however, sufficient to prove appellant's adherence to the enemy, considering the purposes for which the organization was created, namely, "to accomplish the fulfillment of the obligations assumed by the Philippines in the Pact of Alliance with the Empire of Japan"; "to shed blood and sacrifice the lives of our people in order to eradicate Anglo-Saxon influence in East Asia"; "to collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines"; and "to fight the common enemies." (People *vs.* Adriano, L–477, June 30, 1947, 44 Off. Gaz., 4300.)

The appellant, with such proof of adherence, has to be found guilty of treason under count VI, because at least two witnesses (Marcial Flores and Tereso Villar) had testified that the appellant played an active role in bringing about the mass arrest and confinement of the people of barrio Parian, a punitive measure that took place in December, 1944, in reprisal for the killing of a Makapili. The fact that said witnesses were not uniform on the points whether or not there were Japanese soldiers in the raiding party, or whether or not the persons arrested and confined included not only the males but some women and children, is not sufficient to entirely discredit their testimony, as the deficiency refers merely to minor details. Neither may the negative testimony of Elpidio Elasigue, an alleged victim of the raid, to the effect that he did not see the appellant among the raiders prevail over the positive testimony of Marcial Flores and Tereso Villar who, moreover, were not shown to have had any improper motive in testifying against the appellant. For obvious reasons, also, appellant's mere denials and the exculpatory testimony of his wife deserve little or no weight. At any rate, the latter has even strengthened the theory of the prosecution as to appellant's Makapili membership, when she admitted that the appellant was a Sakdal before the war.

Counsel for the appellant contends that, assuming the truth of count VI, no treason was committed because the raid against the people of barrio Parian was motivated by the slaying of a Makapili, and not by a desire to betray one's country. This contention, however, ignores the fact that the appellant had shown his adherence to the enemy by his Makapili membership and that, by retaliat-

ing for the violent death of a fellow member, he had defended the Makapili organization and had thereby committed a positive act in the furtherance of its aims and purposes.

Lack of instruction or education cannot be considered a mitigating circumstance in favor of the appellant, because love of country should be a natural feeling of every citizen, however unlettered or cultured he may be.

The appealed judgment is therefore affirmed, with costs against the appellant. So ordered.

Moran, C. J., Ozaeta, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

PERFECTO, *J.,* dissenting:

1. Juanito Abesamis, 22, married, policeman, Calamba.—In September, 1944, he saw the accused in barrio Parian looking for his brothers-in-law, Tereso Villar and Rufino de Chaves. (2). The accused was accompanied by Japanese. He does not remember how the accused was dressed. He does not know defendant's duty or occupation. (3). He came to know that the accused was looking for Tereso Villar and Rufino de Chaves because he saw him in the company of both. The accused was armed with a revolver. (4). The witness heard about an organization known as Makapili with headquarters at Calamba, but he does not know for certain who the members were. The Filipino who entered the house of Tereso Villar and Rufino de Chaves did not wear any distinctive insignia, band or identifying sign that they belong to the party composed of the Japanese. (5).

2. Marcial Flores, 27, married, policeman, Calamba.—On December 28, 1944 "our barrio (Parian) was zoned. They gathered all the men in our barrio and afterwards we were all taken to the town and imprisoned in the school building." The witness was not arrested because "I jumped out of our window and hid in the banana plants." He saw the accused with some policemen. There was no Japanese. (11). They were armed with guns "My brother-in-law (Antonio Gomez) was ordered by these persons (indicating the accused) tied up." "But when they were already about to go to town, he was released." He saw Antonio Gomez taken away. (12). There were many persons apprehended because in a previous day the dead body of a Makapili was found in the barrio. The accused has connection with the Makapili organization "because they often held meetings in the barrio and trying to recruit people." (13). "He often saw him (the accused) in company with the Japanese whenever they held searching parties in adjoining barrios." Antonio Gomez was released after two days. (14).

3. Miguel Alvarez, 60, married, merchant, Calamba.—"At midnight of November 29, 1944, two Japanese, Juan Bautista, and the accused went to his house and took his son Marcial Alvarez. The witness did not notice whether they were armed. (21). His son was taken away. He heard them saying that they will get another person from the shore named Almario Abasan. They took him on that same night and his nephew Bernardo Ustaris, suspected of being a guerrilla. He did not see any precautionary measure taken to prevent the escape of his son. (22). His son was taken to the store owned by Takasita, then to the municipal building and then to San Pablo. His son was released on December 22. (23).

4. David Carreon, 47, married, assistant provincial fiscal, Laguna.—His house was just in front of the house of Takasita, a Japanese civilian "and I used to see the accused go to that place. There were times when he was armed and there were times when he was not." His arm was a revolver. In November, 1944, a man detained at the house of Takasita managed to escape and the accused pursued him, but fortunately he was not able to catch him. He supposed that the man was a guerrilla. (29). He saw one night a person being tortured by a member of the MP and the accused was present. He did not notice that the accused had done anything there.

5. Remedios Jabacon, 31, married, housewife, Calamba.—"On November 28, 1944, we were awakened by the call of someone at our house who ordered my brother Mario Jabacon and Bernardo Ustaris to dress up." Those who awakened her were Juan Bautista and Clemente Tenido. She saw the accused. (35). Mario Jabacon and Bernardo Ustaris were taken by them to a place the witness does not know. They were being suspected as guerrillas. Mario Jabacon was taken by the Japanese and is dead. Bernardo Ustaris is in Okinawa. (36). Mario Jabacon was able to come back. (37).

6. Elpidio Retusto, 46, married, foreman, Bureau of Public Works, Calamba.—During the Japanese occupation he saw the accused sometimes with a Japanese and sometimes with Filipino Makapilis. He believes him to be a Makapili. On July 4, 1943, at four o'clock in the morning, Francisco Tiamson, Buenaventura Tiamson, Felipe Hernandez, Jose Canicosa and Mrs. De Jesus were taken to the garrison. The witness saw the accused in the garrison, but he was not armed. (42). He did not see who arrested those persons but he heard that Juan Lansanas was one of those who arrested them. He did not know who brought them to the garrison. The day of the arrest, the accused was not in the room, but in another place also within the garrison. (43). "Mrs. De Jesus and her

group were taken to a place about 80 meters from the garrison and I have not seen them return."

7. Marcial Alvarez, 22, single, employee, 110 Plaza Goiti, Manila.—He joined the Fil-American Guerrilla in 1943. (II-I). At around 12 o'clock at night of November 28, 1944, he was awakened by certain Makapilis and Japanese kempeis among whom was the accused. They were dressed in khaki. He did not notice if they were armed. (3). The Japanese kempei was holding a list "and he read my name there and told me to dress up." He saw the accused "when we went down to the road. The accused was one of those who tied my hands. We were taken to the municipal jail at Calamba." Also caught that night were Ernesto Elepano, Mario Jabacon, Eusebio Alviar and Bernardo Ustaris. (4). "They did not molest us while we were in jail." The next morning "we were taken to the garrison in San Pablo. We stayed there until December 22, 1944. We were treated there very badly and cruelly. The Japanese kempei beat me with a big piece of lumber. (5). "I think that when we were taken to the municipal jail he (the accused) was one of those who held my hands. They left us there" in the jail. "When I was taken from my house my hands were tied already. When we arrived at the municipal jail in Calamba my hands were untied." But from Calamba to San Pablo his hands were tied by the Japanese kempei. (6). He was arrested because he was a guerrilla suspect. He was a sergeant of the Fil-American Intelligence. (7).

8. Tereso Villar, 36, married, rig driver, Parian, Calamba.—During the Japanese occupation he used to see the accused in company with Japanese. (16). In the group Japanese soldiers predominated. The accused was armed with a revolver. In September, 1944, the accused went to barrio Parian. "They were looking for my brothers-in-law as they were suspected of being guerrillas. (17). He talked with the accused and requested him not to have his brothers-in-law arrested and the accused "told me that it would not do because they were guerrillas." They searched our house looking for arms. Then they went away. He saw the accused in December, 1944, when we were zonified. (18). Parian was zonified because a Makapili was killed, and no one could point who killed him." "We were locked up and we were forced to tell who killed the dead Makapili. We were about 120 with some women and children." The accused was in the company of some Japanese and Filipinos. They were armed. (19). The accused carried a revolver. "We were taken to the garrison." There they remained two nights and three days. And they were not fed anything. Two persons pointed Rufino de Chaves as the person responsible

for the killing. De Chaves was not arrested. The witness does not know if anything happened to Rufino de Chaves until he was released. (20). The witness heard from people that the Makapilis were the persons who were always in company of the Japanese pointing out guerrillas. One of them was Juan Lansanas. (21).

9. Victoria Aguilar, 57, married, housewife, Calamba.—On November 28, 1944, around two o'clock in the morning, her son Teodoro Jabacon told her mother "he told me to open the door and when I peeped out I saw that he has two companions." (25). He told her that Mario Jabacon and Bernardo Ustaris " were being invited by the Japanese." Clemente Teñido and Juan Bautista were the only ones accompanying Teodoro Jabacon. There were also the De la Cruz brothers and Juan Lansanas. (27). Those who were taken were brought to the municipal building of Calamba. They were not tied. The next morning she returned to bring breakfast. They rode in a truck and they were tied. "I do not know where they were taken." They came back perhaps 24 days after. (28). The accused was always in company with the Japanese kempeis during the enemy occupation. He was always armed. (29).

10. Apolonio Genoveso, 33, married, policeman, Parian, Calamba.—During the Japanese occupation, every time he saw the accused the latter was always in company with the Japanese. He saw him when they searched the house of the Chaves brothers. He had many Japanese companions who were armed with fixed bayonets. The accused was shouting at the foot of the stairways asking "where are the Chavez brothers? the guns, why don't you produce them?" He was looking towards the balcony of the house of Tereso Villar. (35). It happened in September, 1944. The accused was armed with a .45-caliber revolver. (36). Tereso Villar and the De Chavez brothers were guerrillas. (37).

A careful consideration of the testimonies of the ten witnesses for the prosecution will show that not a single overt act of aiding and giving comfort to the enemy has been proved by the testimonies of two witnesses.

Juanito Abesamis said that he concluded that the accused was looking for Tereso Villar and Rufino de Chavez in September, 1944 because he saw them in their houses. No other witness corroborated him. On the contrary, Tereso Villar contradicted him in a way, because Tereso said that when he saw the accused in September, 1944, he saw him looking for his brothers-in-law and that he requested him not to arrest them.

Marcial Flores testified about the alleged zoning in Parian on December 28, 1944, in which Antonio Gomez, his brother-in-law, was tied on orders of the accused, but

then released. No other witness testified as to the alleged arrest of Antonio Gomez. Although Tereso Villar testified that Parian was zonified, he did not state its date. He mentioned only that it took place in December, 1944. This is not enough to conclude that two witnesses testified about the Parian zoning on December 28, 1944.

Miguel Alvarez testified that the accused, accompanied by two Japanese and Juan Bautista, went to his house at midnight on November 28, 1944, and took his son Marcial Alvarez. His son was taken to the store of Takasita, then to the municipal building of Calamba and then to San Pablo. No precautionary measure was taken to avoid the escape of his son. Marcial Alvarez in turn testified that he saw the accused only when he went down to the road and that the accused tied his hands and that he was thereafter taken to the municipal jail in Calamba. He does not say that he was ever brought to the house of Takasita. The testimonies of the two witnesses do not tally on any single detail regarding any specific act attributed to the accused. The two testimonies are contradictory. While the first says that the accused went to his house, Marcial says that he saw the accused only on the road, and while the first says that no precautionary measure was taken to avoid the escape of Marcial, the latter says that he was tied. The evidence does not satisfy the two-witness rule.

David Carreon testified that the accused used to go to the house of Takasita, a Japanese civilian. He gave no testimony damaging to the accused.

Remedios Jabacon says that on November 28, 1944, she was awakened by Juan Bautista and Clemente Teñido, who took her brother Mario Jabacon and Bernardo Ustaris to a place she does not know. She saw the accused at the time. But Victoria Aguilar testified that her son Mario Jabacon and Bernardo Ustaris were taken at two o'clock in the morning of November 28, 1944, by Juan Bautista and Clemente Teñido, who were accompanying her son Teodoro Jabacon, and the accused was not with them. So the testimony of Remedios Jabacon about the participation of the accused in the arrest of Mario Jabacon and Bernardo Ustaris was not corroborated by her mother or by any other witnesses for the prosecution.

Elpidio Rejusto has not given any damaging testimony against the accused whom he simply believes is a Makapili.

The last witness Apolonio Genoveso testified about seeing the accused searching the house of the De Chavez brothers and looking towards the balcony of the house of Tereso Villar, but no one corroborated him.

For all the foregoing, because article 114 of the Revised Penal Code requires that all overt acts of treason should

be proved by the testimony of at least two witnesses, we are of opinion that appellant is entitled to be acquitted and we therefore vote for the reversal of the appealed decision.

Judgment affirmed.

[No. L-1687. December 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* LUDOVICO DEDAL, SIMPLICIO DEDAL and ULPIANO GARBINO, defendants and appellants.

1. CRIMINAL LAW; MURDER; INCREDIBLE EVIDENCE FOR THE DEFENSE; CASE AT BAR.—The defense has utterly failed to overcome the evidence for the prosecution. No reasonable man can believe that M. D. had anything to regret as a result of the dance trouble. On the contrary, it was L whose pride was hurt because he failed to recover his "hamacans" and to stop the dance. For this failure he had to withdraw from the dance, unable to endure his shame before the crowd of young men and girls therein gathered.
2. ID.; ID.; ABSENCE OF EXPLANATION AS TO ACCUSED'S JOINT SURRENDER TO, AND ARREST BY, AUTHORITIES, WITH CO-ACCUSED, EFFECT OF.—As regards S if it were true that he took no part in the killing, no explanation has been given why he went jointly with L to surrender to policeman M. H. soon after the killing and why he had been arrested jointly with L. There is no other explanation for these acts of appellants except that the two brothers had something to do with the death of M. D.
3. ID.; ID.; ALIBI AS A DEFENSE.—The alibi of U. G. is made to stand mainly on the testimony of his wife, R. V. He himself failed to take the witness stand to corroborate her. Her testimony cannot overcome the testimonies of the witnesses for the prosecution who pointed positively to U. G. as one of the killers.

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Demaisip & Dolar for appellants L. Dedal and S. Dedal.
C. Golez for appellant Garbino.
Assistant Solicitor General Carmelino G. Alvendia and *Solicitor Jose G. Bautista* for appellee.

PERFECTO, *J.:*

A dance took place on the night of December 28, 1946, in barrio Patlad, Dumangas, in the house of the spouses Alfredo Dimzon and Simphony Centellanosa, the first agnatic brother of Manuel Dimzon and the second enatic sister of appellants surnamed Dedal.

While the dance was in progress, Ludovico arrived. Misunderstanding took place because he wanted to assume the direction of the affair, notwithstanding the fact that days before Manuel Dimzon was designated by his half-brother Alfredo to preside it, the dance having been or-

ganized by subscriptions to celebrate a *novena*. As he was not allowed to control the affair, Ludovico tried to stop it and, to that effect, tried to withdraw the "hamacans" used in the dance, for they belonged to him. ("Hamacan" is the Hiligaynon word for the Tagalog "sawali," a mat made of interwoven strips of bamboo bark.) To protect the rights of those who contributed to defray the expenses of the dance, Manuel Dimzon opposed Ludovico's move. Failing to take the "hamacans" and to stop the dance, Ludovico withdrew in anger from the house.

On the evening of the next day, December 29, 1946, Manuel Dimzon was met in a nearby hill by the three appellants. Ludovico said to him: "You are the fellow we had been looking; this is your time now," and right then and there, as Manuel gave them his back, stabbed him with a dagger, hitting him on the right buttock. Manuel faced Ludovico and at that time Simplicio Dedal stabbed him with a bolo, hitting him in the forehead, near the right eyebrow (11) Manuel fell down in a canal, where he was followed by the trio. Ulpiano Garbino held his feet and Simplicio his hands, while Ludovico mounted on him. Lucila Junsay, who was standing nearby, shouted for help. Carlos Dimzon, father of Manuel, went to the canal and tried to separate the assailants from his son, but Ulpiano pushed him, by hitting him with a knife. Carlos fell down unconscious, and the three accused ran away. When Carlos recovered consciousness he found his son dead (12). That same evening Ludovico and Simplicio Dedal surrendered to Mauro Hechanova, policeman of Dumangas, delivering to him three weapons, Exhibits B, C and D. All were delivered that same evening by Mauro to chief of police Diosdado Digdigan. Ulpiano Garbino, who has escaped, was arrested two weeks after the killing (21).

The above facts were substantiated by the evidence for the prosecution.

Appellants tried to show that it was Manuel Dimzon who had a motive for getting even with Ludovico, because of the dance incident and it was he who in the evening of the bloody incident, attacked Ludovico with a bolo, who just countered attacked with a dagger in self-defense; that Simplicio, while present at the start of the fight, took no part in it, because he fled through fear, and Ulpiano Garbino was at the time in his home in Ili, taking care of his small child; and that it was only Ludovico who surrendered as the one who actually killed Manuel Dimzon.

The defense has utterly failed to overcome the evidence for the prosecution. No reasonable man can believe that Manuel Dimzon had anything to regret as a result of the dance trouble. On the contrary, it was Ludovico whose pride was hurt because he failed to recover his "hamacans"

and to stop the dance. For this failure he had to withdraw from the dance, unable to endure his shame before the crowd of young men and girls therein gathered.

In his vain effort to show that it was Manuel Dimzon who felt slighted, he tried at the beginning to show that the dance was stopped. He says: "I was not able to take out the 'hamacans', but the dance did not proceed" (43). He was confronted with the testimony of Felix Garino, one of his witnesses, to the effect that the dance continued (31). Ludovico answered with three eloquent mute answers (43) to admit, at last, that he withdrew in anger from the dance, and that the same continued.

As regards Simplicio, if it were true that he took no part in the killing, no explanation has been given why he went jointly with Ludovico to surrender to policeman Mauro Hechanova soon after the killing and why he had been arrested jointly with Ludovico. There is no other explanation for these acts of appellants except that the two brothers had something to do with the death of Manuel Dimzon. The *alibi* of Ulpiano Garbino is made to stand mainly on the testimony of his wife, Romana Villanueva. He himself failed to take the witness stand to corroborate her. Her testimony cannot overcome the testimonies of the witness for the prosecution who pointed positively to Ulpiano Garbino as one of the killers.

The trial court sentenced Ludovico and Simplicio Dedal each to an indeterminate penalty of from ten years and one day of *prisión mayor* to seventeen years, four months, and one day of *reclusión temporal,* considering in their favor the mitigating circumstance of voluntary surrender, while it sentenced Ulpiano Garbino to an indeterminate penalty of from twelve years of *prisión mayor* to seventeen years and one day of *reclusión temporal.* The penalty imposed against Ulpiano Garbino, should be *reclusión perpetua,* there being no modifying circumstances to consider with respect to him. The three accused are also sentenced to jointly and severally indemnify the heirs of the deceased in the sum of ₱2,000 and to pay one-third of the costs. The appealed judgment is affirmed, modified as above stated with respect to Ulpiano Garbino, with costs against appellants.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L-1804. December 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MAXIMO VERGARA, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE FOR THE PROSECUTION HAD BEEN OUTWEIGHED BY THE DEFENSE.—The evidence for the prosecution, every bit of it and as a whole, as appearing in the

record, has been carefully weighed on the scales of justice, and we cannot see our way clear if we were to convict appellant. The testimonies of the three witnesses for the prosecution, D. G., M. M. and F. de L., seem to be, on first reading, overwhelming, but carefuly examined, they appear not to be able to hold their own in the face of facts which the witnesses for the defense tried to prove, important segments of which have been corroborated and strengthened by the rebuttal witnesses for the prosecution.

2. ID.; ID.; PROOF OF FACTS; MOON.—D. G., the common-law wife of the deceased A. de los S., testified that at the time the latter was kidnapped and killed, it was a moonless night and dark. Notwithstanding this fact, and that the killing took place in a coconut grove, all the three witnesses for the prosecution, located at five fathoms from the place of execution, were allegedly able to see clearly M. V. stab the victim with a bolo at the base of his neck, followed by M. V. who unsheathed his dagger and struck A. in the chest on a spot near one of his nipples. The improbability for the three witnesses to see such details of the execution casts serious doubt on their credibility.

3. ID.; ID.; DELAY IN PROSECUTION.—If we consider, further, that it took D. G. several years before proceeding definitely to prosecute the alleged killers of his common-law husband, and that during those several years, since June 27, 1943, she kept silent, no sensible explanation having been given for her long silence, it is too risky to pronounce appellant a murderer beyond all reasonable doubt.

4. ID.; ID.; ALIBI AS A DEFENSE; THE MAXIM "FALSUS IN UNO, FALSUS IN OMNIBUS" APPLIED.—M. V., who was acquitted by the trial court, has shown by oral and documentary evidence that at the time the alleged kidnapping and killing of A. de los S. took place, he was in barracks No. 14 in the concentration camp of Bongabong, Nueva Ecija, as one of the prisoners of the Japanese and, therefore, it is not true that he was, as pointed out by the witnesses for the prosecution, among those who effected the kidnapping and killing of A. de los S. If the witnesses for the prosecution have not been truthful as regards M. V's participation in the crime, it is too reckless to believe them as regards the alleged participation of appellant M. V., and it is more so, considering that several witnesses, whose credibility has not been effectively challenged, testified that in the night in which the crime was allegedly committed, M. V. was far away, rendering services as a leader in a Ronda organization in Paulbo. The trial court did not correctly believe that M. V. played the role attributed to him by the three witnesses for the prosecution in the alleged kidnapping and killing. There is on way of believing the same witnesses so as to convict M. V. If the witnesses for the prosecution cannot be believed as to the alleged participation of an accused in the joint criminal undertaking he allegedly had with another accused, as a matter of logic, they cannot also be believed as to the participation of the latter. In no other case can the maxim "falsus in unus, falsus in omnibus" be more aptly applied.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Surtida, J.

The facts are stated in the opinion of the court.

Tible, Tena & Borja for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Guillermo E. Torres* for appellee.

PERFECTO, *J.:*

Appellant Maximo Vergara is charged with the crime of robbery with homicide, completed in Calabanga, Camarines Sur, on June 27, 1943, causing the death of Amando de los Santos.

Macario Vergara was also charged with the same crime in the same information, but he was acquitted by the trial court. Appellant Maximo Vergara was found guilty and sentenced to *reclusión perpetua* and its accessories, to indemnify the heirs of Amando de los Santos in the sum of ₱2,000 and in the sum of ₱447.35, value of the stolen articles, plus the proportional part of the costs.

The three witnesses for the prosecution testified in substance as follows:

1. Dolores Galicia, 47, widow, testified that on June 27, 1943, she was in her house in barrio Malaboyo, Calabanga, Camarines Sur. At about 7 o'clock in the evening a voice called for Amando de los Santos, her husband. At the third call Amando answered. He stood up and opened the door. Maximo Vergara entered and pushed him and he stumbled down on the floor. He called the name of Macario twice. He was tied by Macario, whose family name the witness does not know and whose person the witness cannot recognize. (2–3). She forgot his identity, a long time having elapsed. She had seen him that night for a long time, but as she was crying she was not able to fix her glance on him. She cannot recognize him, but she can recognize Maximo. Felipe de Leon, Margarito Mecate and the witness were also tied. Felipe de Leon and Margarito were tied by Maximo and Macario. The witness was tied by Maximo. Then they were ordered to go down and Maximo ordered his companions to get all the belongings of the witness. (4–5). The witness did not recognize the persons who were ordered to ransack the house. There were about ten. Maximo and Macario were carrying a bolo and a dagger. Macario was carrying the dagger, and Maximo, the bolo. (6). The belongings taken were eight cavanes of palay, three and a half sacks of rice, earrings and ring, a wrist watch (7), and many other things. (8–9). The witness and her house companions were brought under the coconut trees in a place owned by Benita Apolonio. (10). They were investigated. Felipe de Leon and Margarito Mecate were told that they would be killed if they reported either to the guerrillas or to the Japanese. (11) Amando was taken to a distance of about five or six brazas, (12) to a cogon land near a well where he was killed. He was hacked with a bolo by Maximo Vergara. (13). Then he was stabbed by Macario "perhaps with a dagger near the left nipple." Amando died. (14). Macario untied the witness and her companions,

and they left running away. She did not know where Maximo and Macario went. She told the parents of Amando that he was killed. (15). The following morning the parents got the corpse and buried it in a place where they were making copra. She does not know why her husband was killed. (16). Maximo hacked her husband once at the foot of his neck and Macario stabbed him once. (17). He found two wounds in the body of her husband, one on the neck and the other on the breast. The witness and her companions were brought to a place about three kilometers from her house. She was brought to the place by Maximo and Macario. (18). Macario was with her all the time until her husband was killed. It was dark. It was a moonless night. In her house there was a small poor light. When her husband was stabbed with a dagger it was dark; there was no moon. She was not able to recognize the general appearance or the face of the attacker, because "I was crying and I was afraid." (19). She cannot recognize Macario. She can recognize only Maximo, whom he has known for about four or five years. (20). The witness had conversation with Maximo Vergara frequently. Sometimes they would meet on the way, and at other times she would go to his house and buy eggs. At one time, immediately after the arrival of the Japanese, Maximo told her that he would kill Amando. (22). She was told by Maximo scarcely three months after the arrival of the Japanese. Asked if she warned her husband, she said "I did not." Later on, she said, "I told my husband." (23). On that night of June 27, she was in the house with her husband, Amando. Felipe de Leon came because he wanted to buy a small pig, and Margarito Mecate was present grating coconuts. (24). Her husband was hacked on the right side of the base of his neck. (25). She saw when the bolo flashed. The night was dark although the stars were bright. (26). Maximo was the one who hacked her husband. She was crying. After wiping her tears, she looked at him. (27). She did not report to the authorities that her husband was killed, because "we are afraid." (30). She kept the killing a secret throughout the Japanese occupation. It was only after liberation that she revealed it "to the father of my husband who filed the complaint before the CIC." (31). Her father-in-law reported the case to the CIC in Calabanga, but he got sick and the case was abandoned until he died. She reported the matter to the authorities on August 24, 1946. (32). The witness went with her father-in-law to Emeterio Malanyaon, chief of police of Calabanga, but she did not tell him who killed her husband. She was not asked about it. (33–34). She was not legally married to Amando. (35).

2. Felipe de Leon, 26, single, farmer, testified that on June 27, 1943, he went to the house of Dolores Galicia.

(36). She went there at four o'clock in the afternoon to buy a litter to be sacrificed at the marriage of his brother. He requested her to allow him to spend the night in her house. (37). Immediately after they lay down, someone came calling Amando. After the third call, Amando stood up slowly and opened the door. After a small opening was made, someone rushed in and pushed Amando saying, "Macario, tie him up." The one who rushed in was Maximo Vergara. (38). The witness was tied up in the same way as Mecate, both by Macario upon orders of Maximo. (39). Dolores Galicia was also tied up with her hands at the back, and because she was making noise, she was gagged with a handkerchief. The inmates of the house were ordered to go downstairs. Maximo was carrying a bolo and Macario, a dagger. (40). Then Maximo ordered about eight or ten persons to go up the house and bring down the palay. The witness was not able to recognize them. (41). Then they were brought to the coconut land of Benita Apolonio in the following order: Amando de los Santos, Margarito Mecate, the witness and Dolores Galicia. (42). Upon reaching the place Maximo told the witness "be careful; don't tell anybody about this." The witness answered that he would not tell anybody. Amando de los Santos was brought to a distance of about five brazas ahead. He was blindfolded with a handkerchief by Macario and Maximo. Maximo unsheathed his bolo and hacked Amando in the base of the right side of his neck. (43). Macario unsheathed his dagger and stabbed Amando, hitting him on the left side of the breast. Maximo approached the witness and told him not to reveal to anybody what he saw. They searched his body and found ₱1,500 in Japanese currency. The witness requested that the money be not taken, but Maximo took it saying "how if you will be the next". Macario was ordered to let loose the other two. (44). After having been untied and walking ten meters the witness run away. (45). The witness did not report the matter to any authority because he was afraid. (58). The witness can recognize Maximo because of the small pimple on his face which is like a mole. He saw it that night, because it was bright. (66).

3. Margarito Mecate, 25, married, farmer, testified that on June 27, 1943, he was in the house of Dolores Galicia. (73). At about 7 o'clock that evening, someone downstairs was calling the name of Amando. Amando who was then lying down rose and opened the door. When the door was slightly opened, Macario and Maximo rushed in pushing the door, and as Amando was behind it, he fell down. Maximo ordered Macario to tie him. Maximo ordered Macario to tie Felipe. (74). Then the witness was asked why he was in the house and he was also tied.

Because Dolores Galicia was making noise, Maximo got handkerchief from his pocket and introduced it into her mouth. She was also tied. Maximo carried a bolo and Macario Vergara a dagger. (75). They were told to go downstairs, and the companions of the intruders were ordered to go up the house and get the belongings therein. They brought down palay and rice. (76). The witness did not see any other thing brought down. After the palay and rice were brought down, they were ordered to proceed to the coconut groves of Benita Apolonio. Upon arriving at the place, the malefactors said that they would kill them if they would reveal what happened to the Japanese or to the guerrillas. The witness answered that he would not reveal. He was afraid. (77). Amando was brought to a lower portion of the land, near a well, at a distance of about five brazas, and he was blindfolded, the witness not knowing whether with a handkerchief or some other thing. Maximo was the one who blindfolded him. Maximo unsheathed his bolo and struck him, hitting him on the right shoulder at the base of the neck. When Amando was able to follow, Macario unsheathed his dagger and stabbed him on his left breast. (78). Amando fell down and was already dying, and the two accused came to the place of the witness and his companions and asked whether they would reveal to anybody what they have witnessed. The witness said that he would not reveal. The two accused said that if they would reveal what they had witnessed, they would kill them wherever they might be. They were untied and told to proceed. (79). The witness knows Maximo Vergara since he was in charge of the land of Jose Tordilla. (82). When the Japanese came to the Philippines in 1941, Maximo Vergara was already the *encargado* of Jose Tordilla. The witness was also working in said land. (83). The witness saw Macario for the first time on the night of the incident, and it was also the only time he saw him. (84). Macario was the one who tied him. At the time there was light. (85). The witness was in the house of Dolores Galicia because he was making oil from coconut, it being his only means of livelihood during the Japanese occupation. Galicia was the only person who had many coconuts in the neighborhood. Because he was there, he was invited by Galicia to sleep in the house. (86) There was coconut in the land of Tordilla, but Maximo Vergara, the *encargado,* did not let the witness get coconuts from the land, alleging that the coconuts would be made into copra. (87).

The witnesses for the defense testified in substance as follows:

1. Tomas Sta. Maria, 36, married, teacher, testified that in 1943, he was the President of the Neighborhood

Association of Paulbo, district No. 11, comprising the barrios of Malaboyo, Cabangahan and Paulbo. Upon orders of the Japanese, Rondas were also organized. (118-119) Maximo Vergara was the leader of Ronda Group No. 9. (120). Margarito Mecate is a member of Group 9. On June 27, 1943, the group was on guard. (122). The witness saw Maximo Vergara on duty, because the witness' house is only 20 meters from the guardhouse. (124). The Ronda had to render service for twenty four hours, from six to six the next day. (125). In the morning of June 27, 1943, the witness saw Maximo Vergara and Margarito Mecate. (126). At night the witness did not inspect the group anymore because it was not his duty. The witness cannot tell whether the said two persons were present that night. The duties of the Rondas were to report to the Japanese garrison any guerrilla passing the barrio or any incident happening therein. (127).

2. Emeterio Malanyaon, 40, married, testified that he was the Chief of Police of Calabanga before the outbreak of the war in 1941. During the Japanese occupation he did not continue in the position. In 1945, he was recalled. (149). On June 28, 1945, Maximo and Macario Vergara were both investigated in the witness' house. When the witness went outside, Bonifacio de los Santos approached him saying that he wanted to testify against the Gabas brothers from Carolina who killed Amando on the night of June 27, 1943. (151). They said that they wanted to file a criminal complaint against the Gabas brothers, the persons who took Amando, but they could not tell their names. (152). They did not make any mention of the Vargas. Aling Loling told him that there were three persons in the house. When he was grating coconuts, Amando was taken by the Gabases who also wanted to take her. Two persons entered the house but they had many companions downstairs that night. They said that they did not recognize the two persons who entered the house, but later found out from information that they were the Gabases. (153). Aling Loling told that the three of them in the house were herself, Amando, and an old woman whose name she did not mention. She did not mention the names of Felipe de Leon and Margarito Mecate. (155). According to Aling Loling, the two men wanted to take her along also, because they said she was a spy of the Japanese, but because she pleaded to them, Amando alone was taken. She looked for Amando and three days later found his body in stink condition about 250 meters from their house with wounds. (156). She said also that the belongings, and in the house were carried away, including documents, and the things were handed over to the people downstairs. She did not tell that her husband was taken to a certain place and then killed. She told only that Amando de los Santos was taken away,

they looked for him and three days later they found him. (157). She told that there was a wound on the stomach which was already of bad smell. (158).

3. Lucas Sorillano, 42, married, farmer, testified that in June, 1943, he was in the concentration camp of Bongabong, Nueva Ecija, as a prisoner of the Japanese. He was interned there on January 22, 1943, and among his companions was Macario Vergara, one of the accused. (171). They were assigned to barrack No. 14, of which the witness was in charge. Exhibit 6 is the list of the persons under the witness in Bongabong. (172). The person appearing in the list No. 5 as private Vergara Macario, with No. 00215, is the same accused. They stayed in Camp Bongabong for more than five months. They had undergone a training for rejuvenation in the camp. Exhibit 7 is a certificate showing that the witness had completed the training. (173). They were released from Camp Bongabong on July 1, 1943, and Macario Vergara was among those released then. (174). After they had been released they were brought by the Japanese to Cabanatuan and from there to Manila where they arrived on July 3, 1943. From there, they went to Naga where they arrived on July 5 at about 5 o'clock in the afternoon. (178). They constituted a group of one hundred and fifty one prisoners listed in Exhibit 8 brought by Japanese Ikeda to work in Doring Island. (179). The witness was brought to Camp Bongabong coming from Camp O'Donnell where they were taken on January 21, 1943. (184). According to the Japanese and Vargas himself, he escaped together with Jose Gomba from Camp Bantayan on May 14, 1943. He was turned over to the witness on May 21, 1943. (190.) Macario Vergara acted as one of the policemen in Camp Bongabong. (191).

4. Hilario Malarde, 39, married, farmer, testified that in June, 1943, he was a member of the Ronda organization in Paulbo, Calabanga. The leader was Maximo Vergara. (202). He reported to duty at 6 o'clock in the morning of Saturday, June 27, 1943, when he was released from duty at 6 o'clock the following morning, Sunday. His companions were Maximo Vergara, Faustino Baldemor, Simeon Luzon, Margarito Mecate. (203). Maximo Vergara and Margarito Mecate rendered services for 24 hours on June 27. Both spent the whole night in the guardhouse. (204). Filominado Rodriguez, the barrio lieutenant, inspected the Ronda on June 27 at 6 o'clock in the morning, at 12 noon, and at 6, 8, and 10 o'clock in the evening and then at 12 o'clock and at 4 o'clock the next morning. (205). The witness remembers having rendered service on June 27, because an accident happened on said date. (206). The witness happened to learn about the kidnapping of Amando de los Santos on June

28, 1943. At 3 o'clock in the afternoon, Dolores Galicia told the witness that she was looking for Amando because she was kidnapped the night before. (209). The witness does not remember other times such as when the Japanese invaded the Philippines, when the Americans liberated Camarines Sur, when he was married, when his child was born. (211–212).

5. Simeon Luzon, 37, married, farmer, testified that he rendered service in the Ronda on June 27, 1943, from 6 o'clock in the morning up to 6 o'clock the following morning. Among those who reported for duty were Maximo Vergara, Ignacio Agura, Fausto Baldomero, Dalmacio Barrameda, Hilario Miranda and Margarito Mecate. Filominado Rodriguez, the barrio lieutenant, visited them in the guardhouse several times. (215, 216). During the whole time Maximino Vergara and Margarito Mecate were in the guardhouse, located in front of the house of Filominado Rodriguez and about three kilometers from the house of Dolores Galicia. (217). On June 14, 1946, Maximo Vergara was getting coconuts in the land of Jose Tordilla. Dolores Galicia accompanied by Felipe de Leon, arrived at the place and tried to stop Maximo Vergara from gathering coconuts, alleging that she was the one to gather coconuts and to make copra because the land had been mortgaged to her by Benita Apolonio, but Maximo Vergara told her to file a complaint against Jose Tordilla because he is the owner and Maximo was a mere *encargado*. (220–221). Dolores Galicia left the place, unable to gather coconuts. She was angry. (222).

6. Filominado Rodriguez, 43, married, farmer, testified that on June, 1943, he was the barrio lieutenant of Paulbo, Calabanga and was selected as inspector of Rondas. (242). When he visited the Ronda at 6 o'clock in the morning of June 27, 1943, he saw there among others Maximo Vergara and Margarito Mecate. Maximo was the leader of the Ronda. (243). He visited the Ronda at 6 o'clock in the afternoon, then at 8, 10 and 12 o'clock at night. Among those present were Maximo Vergara and others. (244). On June 28, 1943, when he was able to go home, he was apprehended by Dolores Galicia and told him that Amando was taken the night before by the mountain people. (245). The witness reported it to the chief of police Alejandro Belleca. Dolores Galicia went with him. She did not mention any name of the persons who kidnapped Amando. (246). The witness recommended to the members of the Ronda to look into the case. On the third day, Bonifacio de los Santos came to the witness telling him that Amando was found in the land of Jose Tordilla near the river. Upon this report, the witness went to the place with Bonifacio de los Santos, Dolores Galicia, Vicenta, wife of Bonifacio, and when they arrived at the place, Amando was lying face upward, with

two hands on the back near the buttock. The body was in a state of decomposition and was ill-smelling. (247). Before he was wrapped in a mat, his ring was taken by his mother. The body showed a wound at the base of the neck. It was brought to the land of Dolores Galicia and burried. The witness was present at the burial. The mother of the witness and the mother of Bonifacio de los Santos are first counsins. Amando and Dolores Galicia had been living as common-law husband and wife for about two years before the incident. (248). The witness reported the finding of the body of Amando to the chief of police who told him that the finding will be reported to the Japanese. (249). Dolores did not tell the witness who the kidnappers were, but it was Bonifacio de los Santos who told him that Dolores said that the Gabases were the ones. (250).

7. Maximo Vergara, 59, married, farmer, denied having participated in the kidnapping and killing of Santos as testified to by Dolores Galicia, Margarito Mecate and Felipe de Leon. (268-271). At 6 o'clock in the evening of June 27, 1943, he was in Paulbo on ronda duty. Among his companions was Margarito Mecate. (271). He said he was on duty from 6 o'clock in the morning of June 27, until 6 o'clock the following morning, Sunday. The witness was confined in jail on July 3, 1943 because Jose Garza reported that he was giving supplies to the guerrillas in the mountain. (274). Dolores Galicia filed the complaint in this case against the witness because of her grudge on account of the land of Benita Apolonio. On July 10, 1946, she told the witness that she wanted to get coconuts from the land of Benita Apolonio. On July 14, the witness gathered coconuts in the land of Jose Tordilla. Dolores Galicia accompanied by Felipe de Leon, came, but the witness prevented her from gathering coconuts telling her that the land was not Benita's but Tordilla's and that if she preferred she might file a complaint against Jose Tordilla. Dolores Galicia wanted to gather coconuts because the land of Benita Apolonio was mortgaged to her. There was a conflict between Benita Apolonio and Jose Tordilla with respect to the land, but when the case came to the justice of the peace of Calabanga, as Benita could not produce any paper, the land was adjudged to Jose Tordilla. (275-276). Dolores Galicia was unable to gather coconuts on July 14, 1946. Because of this, Benita Apolonio, with Dolores Galicia and Felipe de Leon as witnesses, filed against the accused the complaint Exhibit 9, where the accused is mentioned as Zosimo Vergara. The case was won by the accused. (277). Exhibit 10 is the decision of the justice of the peace. Benita Apolonio appealed to the court of first instance. The witness continues to be in possession of the

land. Margarito Mecate testified against the accused because of his grudge against the accused who once advised him not to have for a paramour his own niece because the accused did not like the land of Jose Tordilla to be stained. As a matter of fact, Mecate has children with his niece. (278). The accused provided Mecate with a plow, a carabao and rice seedlings for the cultivation of the land of Tordilla upon the agreement that one-third of the products and one-half of the offsprings of the carabao were to be given to the accused. Two years had elapsed and Mecate had not complied with the agreement, and the accused drove him out of the land of Tordilla. (279). On July 14, 1946, when Dolores Galicia wanted to gather coconuts in the land of Tordilla, Felipe de Leon who was with her, was carrying a scythe with which to gather coconuts. The accused prevented him from doing so. Because he was showing stubbornness, the accused made an action to slap him. The accused pushed away Dolores Galicia and she and De Leon went away. (280). Dolores Galicia used to visit the house of Juan Garza, with whom the accused has a litigation about a piece of land. The litigation was started in the name of Jose Garza, son of Juan Garza. (281-282). The witness was released by the Japanese from confinement in August, 1943. (283).

8. Macario Vergara, 46, married, farmer, denied having participated in the alleged kidnapping and killing of Amando de los Santos as testified by the witnesses for the prosecution. (304-306). In June, 1943, he was in Camp Bongabong, Nueva Ecija, where he was interned by the Japanese when he surrendered. He was in barracks No. 14. (307). His number was 00216. He was released on July 1, 1943. After his release he went to Manila and was lodged in Bilibid Prisons. From there he proceeded to Lucena and Naga where he arrived on July 5, 1943. They were about 151 prisoners. They were taken by the Japanese Ikeda to be brought to the mines of Doring Islands. * * * They remained in the provincial jail of Naga for twelve days. (308, 309).

As rebuttal witnesses, the following testified for the prosecution in substance as follows:

Margarito Mecate testified that in June, 1943, he rendered services as ronda guard under Maximo Vergara. (332). The last time he rendered such services was Saturday, the 26th. The killing of Amando Santos took placed on Sunday evening, June 27, 1943. (333). It is not true that he has a grudge against Maximo because he told him that he was living an immoral life with his niece. It is true that Maximo gave him a carabao and a plow, but Vicente Pron recognized the plow to be his, alleging that it was stolen from him by Maximo Vergara. (334).

The witness accompanied Vicente Pron to Maximo Vergara, and Vicente Pron was able to recover the plow. The witness could not work the land without a plow. Tordilla did not send him away. He asked for another land, and he transferred to the land of Santa Maria. As he was unable to find a carabao, he returned the land to Tordilla. (335). The witness is sure that the 26th of June was Saturday because Filominado told him that he would be on ronda duty then. (337).

Dolores Galicia testified that it is not true that Bonifacio de los Santos and she went to see Emeterio Malanyaon on June 28, 1945. (341). She did not know anything about the two Gabases, neither had she talked with Emeterio Malanyaon. (342). It is not true that she had seen Hilario Malarde in the afternoon of June 28, 1943, looking for Amando. (343). It is not true, as testified by Simeon Luzon, that she and Felipe de Leon went to Jose Tordilla's coconut land on July 14, 1946, or that Maximo Vergara prohibited her from gathering coconuts in the said land. It is not true, as testified by Filominado Rodriguez, that in the early morning of June 28, 1943, he went to his house to report that Amando was kidnapped by some people from the mountain. (344). What was testified to by Filominado Rodriguez is not true. (345). It is true that Benita Apolonio mortgaged a land to her, and that in the case of Benita Apolonio *vs.* Maximo Vergara she testified in the justice of the peace court of Calamba because the land was Benita's and not Tordilla's. (347). She remembers having testified in the justice of the peace court that Maximo Vergara prevented her from taking coconuts in the land involved in the litigation. Really she simply passed the land on July 14, 1946. Her companion was Felipe de Leon. She did not speak to Maximo Vergara. (348). She never talked to Emeterio Malanyaon. It was Bonifacio de los Santos who talked to him. She saw him only in the municipal building. (349). She reported the killing of her husband to nobody. (350). Neither was Bonifacio de los Santos able to talk with the CIC. He talked with Malanyaon. (351).

Marcelo Batalla, 43, married, farmer, testified that in 1943, he saw Maximo Vergara on the land of Tordilla. (352.) He was living with his brother Maximo. He saw Macario in Manila, 1943. He has been seeing him since March, 1943. (353). In June, 1943, he saw him several times. (354). He has forgotten if in July, 1943, there were still Japanese in Calabanga. (358). In May, 1946, there were still Japanese in Calabanga. (359).

Juan Garza, 60, married, proprietor, testified that he has not instigated this case against Maximo Vergara. He has no interest in the case. It is not true that Dolores Galicia had often been in his house. (363). Prior to

June 27, 1943, he saw Macario Vergara while he was at the foot of the Talacop bridge. (364). He saw him in Calabanga during the months of May and June, 1943. (365). In 1942, Macario Vergara worked in a portion of the land of the witness' son. He remained there until November 30, 1942, in accordance with a court agreement. He destroyed the storehouse. Macario Vergara is a "grass doctor." (366). His son Jose Garza filed an action against Maximo and Macario Vergara. After the trial of the case in 1946, Maximo Vergara assaulted the witness. (368). Maximo Vergara and eight men tried to attack his son. Macario Vergara occupied the land of his son Jose without anyone's consent. (369). In 1945, Maximo and Macario Vergara refused to pay the rent of the land. They entered into an agreement with his son Jose in a civil case. The witness himself had to give a present of ₱300.00. The case was instituted by Jose against Maximo and Macario Vergara. The case was appealed to the court of first instance. (370). It was agreed that the witness had to pay ₱300 and the Vergaras to give him twenty cavanes. Because the Vergaras failed to give the twenty cavanes, they were ordered to comply with the order so as not to be punished for contempt. (371). On October 24, 1946, Maximo Vergara with two soldiers took palay from the land. The witness' sons, Vicente and Jose Garza, were accused for coercion for taking away the palay. (373). The land was retaken by the Garzas because Maximo Vergara is detained. (374-375).

Vicente Garza, 36, married, proprietor, testified that he knows Macario Vergara since he was taken as tenant of his father in 1929. Macario Vergara transferred to their land in May, 1942. (379). He saw Macario Vergara often before June, 1943. (380). The witness was not a party in a coercion case which happened on October, 1945, against Macario and Maximo Vergara, but it was his brother. After the trial of the civil case No. 410 in the justice of the peace court of Calabanga, Jose Garza *vs.* Maximo and Macario Vergara, the witness was boxed by *procurador* Ariston. The witness hit him back.

Benita Apolonio, 47, widow, testified that she saw Macario Vergara before June 27, 1943. He was residing in the land of Jose Garza. Macario was always there. The witness' house is about half a kilometer away from the place of Macario. (384). Macario is a farmer working the land of Jose Garza. (385). The witness accused Maximo Vergara of gathering coconuts from her coconut land. (386). Dolores Galicia was a witness in the case. She asked her to testify in this case. (386–387).

The evidence for the prosecution, every bit of it and as a whole, as appearing in the record, has been carefully weighed on the scales of justice, and we cannot see our

way clear if we were to convict appellant. The testimonies of the three witnesses for the prosecution, Dolores Galicia, Margarito Mecate and Felipe de Leon, seem to be, on first reading, overwhelming, but carefully examined, they appear not to be able to hold their own in the face of facts which the witnesses for the defense tried to prove, important segments of which have been corroborated and strengthened by the rebuttal witnesses for the prosecution.

Dolores Galicia, the common-law wife of the deceased Amando de los Santos, testified that at the time the latter was kidnapped and killed, it was a moonless night and dark. Notwithstanding this fact, and that the killing took place in a coconut grove, all the three witnesses for the prosecution, located at five fathoms from the place of execution, were allegedly able to see clearly Maximo Vergara stab the victim with a bolo at the base of his neck, followed by Macario Vergara who unsheathed his dagger and struck Amando in the chest on a spot near one of his nipples. The improbability for the three witnesses to see such details of the execution casts serious doubt on their credibility. If we consider, further, that it took Dolores Galicia several years before proceeding definitely to prosecute the alleged killers of her common-law husband, and that during those severals years, since June 27, 1943, she kept silent, no sensible explanation having been given for her long silence, it is too risky to pronounce appellant a murderer beyond all reasonable doubt.

The evidence for the defense and the testimonies of the rebuttal witnesses for the prosecution show that on July 14, 1946, Dolores Galicia, accompanied by Felipe de Leon, intended to gather coconuts from a land that she alleged was mortgaged to her. Appellant Maximo Vergara, who was in the land gathering coconuts at the time, alleging that the land belonged to his principal Jose Tordilla, prevented Dolores Galicia and Felipe de Leon from gathering coconuts, and both had to leave the place empty-handed. Thereafter litigation was started in the justice of the peace court of Calabanga between Benita Apolonio, the alleged mortgagor of Dolores Galicia, and Maximo Vergara, in which Dolores Galicia testified as a witness against Maximo Vergara.

On the other side, there has also been trouble between Juan Garza and his sons Vicente and Jose Garza on the one hand and Macario Vergara on the other, about the possession of a piece of land, and the trouble likewise reached the courts of justice. After a trial in the justice of the peace court, Juan Garza was attacked and there had been an interchange of fist blows between Vicente Garza and Macario Vergara. This and the other litigation lead us to believe that the belated prosecution against Maximo and Macario Vergara could have been motivated, not by

any participation they may have had in the alleged killing of Amando de los Santos, but by their opponents in judicial litigations who wanted to give vent to their grudge against them.

Macario Vergara, who was acquitted by the trial court, has shown by oral and documentary evidence that at the time the alleged kidnapping and killing of Amando de los Santos took place, he was in barracks No. 14 in the concentration camp of Bongabong, Nueva Ecija, as one of the prisoners of the Japanese and, therefore, it is not true that he was, as pointed out by the witnesses for the prosecution, among those who effected the kidnapping and killing of Amando de los Santos. If the witnesses for the prosecution have not been truthful as regards Macario Vergara's participation in the crime. it is too reckless to believe them as regards the alleged participation of appellant Maximo Vergara, and it is more so, considering that several witnesses, whose credibility has not been effectively challenged, testified that in the night in which the crime was allegedly committed, Maximo Vergara was far away, rendering services as a leader in a Ronda organization in Paulbo. The trial court did not correctly believe that Macario Vergara played the role attributed to him by the three witneses for the prosecution in the alleged kidnapping and killing. There is no way of believing the same witnesses so as to convict Maximo Vergara. If the witnesses for the prosecution cannot be believed as to the alleged participation of an accused in the joint criminal undertaking he allegedly had with another accused, as a matter of logic, they cannot also be believed as to the participation of the latter. In no other case can the maxim "falsus in unus, falsus in omnibus" be more aptly applied.

The appealed decision is reversed and appellant Maximo Vergara is acquitted. He shall be released from confinement upon the promulgation of this decision.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concurs.

Judgment reversed, appellant aequitted.

[No. L–2581. December 2, 1948]

FIDEL C. QUERUBIN, petitioner, *vs.* THE COURT OF APPEALS (Fourth Division) and FELIPE S. MAMURI, respondents

1. ELECTIONS; APPEAL IN ELECTION CONTEST; PROVISIONS AS TO TIME WITHIN WHICH TO DISPOSE APPEAL, NATURE OF.—The provision of section 178 of the Revised Election Code, that the appeal in election contests be decided "within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken," the same as the provision in section 177 of the same code requiring that the trial court shall decide a protest within six months or one

year from its filing when contesting a municipal or a provincial office, is directory in nature.

2. ID.; ID.; INTENTION OF THE LAW LIMITING THE TIME WITHIN WHICH TO DISPOSE THE APPEAL.—The purpose of the law in sections 177 and 178 of the Revised Election Code is to impress the need of speedy disposal of election contests, as imperatively demanded by public interest. The terms of office of elective positions are short. Any cloud as to the true result of an election should be dispelled as soon as possible. Public faith, confidence and cooperation, essential to the success of government, are jeopardized by controversies as to who have been actually chosen by the electorate. These controversies should be settled as soon as possible. Doubts as to the true expression of the will of the people in polls should be cleared out without delay. The legislative policy, as embodied in sections 177 and 178 of the Revised Election Code, of hastening the administration of justice in election contests, is aimed at making more effective the constitutional principle that sovereignty resides in the people. The lapse of the period of time provided for in said sections should not have the effect of defeating the purposes of the system of judicial settlement of protests.

3. ID.; ID.; DISMISSAL OF ELECTION CONTEST OR APPEAL FOR FAILURE OF COURTS TO RENDER FINAL DECISION WITHIN THE TIME AS THEREIN PROVIDED FOR, IS UNJUSTIFIED.—To dismiss an election contest or the appeal taken therein because the respective courts, regardless of cause or reason, have failed to render final decisions within the time limits of said sections, is to defeat the administration of justice upon factors beyond the control of the parties. That would defeat the purposes of the due process of law and would make of the administration of justice in election contests an aleatory process where the litigants, irrespective of the merits of their respective claims, will be gambling for a deadline. The dismissal in such case will constitute a miscarriage of justice. The speedy trial required by the law would be turned into a denial of justice.

4. ID.; ID.; FORMER PRECEDENTS ABANDONED, THE DOCTRINE OF "STARE DECISIS."—The doctrine in the case of Portillo *vs.* Salvani (54 Phil., 543) should be abandoned, even as modified in the case of Cacho *vs.* Abad (61 Phil., 606), where it was stated that the Supreme Court "has assumed jurisdiction over a considerable number of election cases which arrived here after the expiration of the year period without any protest being made against this practice."

PETITION for review on certiorari.

The facts are stated in the opinion of the court.

Gregorio P. Formoso for petitioner.

PERFECTO, *J.:*

Petitioner challenges the jurisdiction of the Court of Appeals to continue taking cognizance of the appeal in the election case of Fidel C. Querubin *vs.* Felipe S. Mamuri, CA—2843–R, concerning the mayoralty of Ilagan, Isabela, because of the expiration of the three-month period provided for in section 178 of the Revised Election Code, which reads as follows:

"SEC. 178. *Appeal from the decision in election contests.*—From any final decision rendered by the Court of First Instance in prot-

est against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be, within five days after being notified of the decision, for its revision, correction, annulment or confirmation, and the appeal shall proceed as in a criminal case. Such appeal shall be decided within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken. (C. A. 357–172.)"

The record of the appealed case was received by the Court of Appeals on May 22, 1948. On August 23, 1948, petitioner filed a motion to dismiss the appeal on the ground that the three-month period provided for by section 178 of the Revised Election Code expired on August 22, 1948, and that, consequently, the Court of Appeals had lost its jurisdiction over the case, invoking to the effect the doctrine in Portillo *vs.* Salvani (54 Phil., 543) holding mandatory a former legal provision that "all proceedings in electoral contest shall be terminated within one year."

The motion to dismiss was denied on September 15, 1948, upon the ground that the period within which appellant had to file his brief had not as yet expired.

The provision of section 178 of the Revised Election Code, that the appeal in election contests be decided "within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken", the same as the provision in section 177 of the same code requiring that the trial court shall decide a protest within six months or one year from its filing when contesting a municipal or a provincial office, is directory in nature. The purpose of the law in sections 177 and 178 of the Revised Election Code is to impress the need of speedy disposal of election contests, as imperatively demanded by public interest. The terms of office of elective positions are short. Any cloud as to the true result of an election should be dispelled as soon as possible.

Public faith, confidence and cooperation, essential to the success of government, are jeopardized by controversies as to who have been actually chosen by the electorate. These controversies should be settled as soon as possible. Doubts as to the true expression of the will of the people in polls should be cleared out without delay. The legislative policy, as embodied in sections 177 and 178 of the Revised Election Code, of hastening the administration of justice in election contests, is aimed at making more effective the constitutional principle that sovereignty resides in the people. The lapse of the period of time provided for in said sections should not have the effect of defeating the purposes of the system of judicial settlement of protests.

To dismiss an election contest or the appeal taken therein because the respective courts, regardless of cause or reason, have failed to render final decisions within the

time limits of said sections, is to defeat the administration of justice upon factors beyond the control of the parties. That would defeat the purposes of the due process of law and would make of the administration of justice in election contests an aleatory process where the litigants, irrespective of the merits of their respective claims, will be gambling for a deadline. The dismissal in such case will constitute a miscarriage of justice. The speedy trial required by the law would be turned into a denial of justice.

The doctrine in the case of Portillo *vs.* Salvani (54 Phil., 543) should be abandoned, even as modified in the case of Cacho *vs.* Abad (61 Phil., 606), where it was stated that the Supreme Court "has assumed jurisdiction over a considerable number of election cases which arrived here after the expiration of the year period without any protest being made against this practice."

The petition is dismissed.

Moran, C. J., Parás, Pablo, Briones, Tuason, and *Montemayor, JJ.,* concur.

Feria and *Bengzon, JJ.,* concur in the result.

Petition dismissed.

[No. L-1764. December 9, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANGELO MAGSILANG, defendant and appellant

CRIMINAL LAW; MURDER; AGGRAVATING CIRCUMSTANCE, NOCTURNITY AND TREACHERY AS ONE AND COMPLEMENTARY.—Except in special cases, these two circumstances always go together and are absorbed in the same offense and in the present case we believe that although there is reason to believe that nighttime was purposely sought by the appellant in committing the crime and that in dealing the blow from behind, there was treachery, the two circumstances may well be regarded as complementing each other and to be considered as one circumstance only, to qualify the killing as murder.

APPEAL from a judgment of the Court of First Instance of Tarlac. Concepcion, J.

The facts are stated in the opinion of the court.

Miguel F. Trias for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Manuel Tomacruz* for appellee.

MONTEMAYOR, *J.:*

This is an appeal by Angelo Magsilang from a decision of the Court of First Instance of Tarlac, finding him guilty of murder and sentencing him to *reclusión perpetua* and to indemnify the heirs of the deceased Bernabe Balatbat in the amount of ₱2,000 and to pay the costs.

We have carefully examined the record of this case, particularly the sworn statement (Exhibits A, A-1) made

by the defendant before the police authorities of Bamban, Tarlac in the course of his investigation, as well as the pictures (Exhibits B to B–4) depicting his re-enactment of the crime admitted to have been committed by him and the circumstances under which said pictures were taken, and we consider the present case of murder against the appellant, quite clear and as fully established. The facts of the case are simple and may be stated as follows:

During the Japanese occupation the appellant Angelo Magsilang became the leader or chairman of the Hukbalahap organization in the barrio of Anupul, municipality of Bamban, Tarlac. Taking advantage of his leadership and position, he committed abuses, even atrocities, without any hindrance or effective opposition on the part of the barrio folk who were completely dominated by fear of him. He took a fancy for Valentina Mandal, the wife of Bernabe Balatbat who was living with her in the same barrio. And in order to facilitate his amorous but unlawful venture and to avoid any interference on the part of the husband, he continuously intimidated and threatened Bernabe Balatbat until the latter left his wife and home and went to live with his brother in the town of Mabalacat. Once the field was clear Angelo Magsilang pressed his suit, and exerted pressure, and Valentina who was equally dominated by fear, not only for her own safety but also for that of her husband and children, had to submit to the defendant's illicit desires, as a result of which, she became Angelo's unwilling mistress. After liberation and believing that peace and order and the reign of law had returned, Bernabe Balatbat left his temporary residence in Mabalacat and returned to live with his wife and children in his home in the barrio of Anupul. The appellant evidently was bent on continuing his illicit relations with Valentina Mandal. At the same time, he perhaps felt he was no longer in a position to resume his efforts in intimidating and threatening Bernabe to leaving his home again, and so he decided to dispose of him more effectively and definitely.

On January 15, 1947, at about midnight, the appellant went to the home of the deceased Bernabe Balatbat, where he was sleeping with his wife Valentina and their four children. From below he called and woke up Bernabe and told him to come down saying that he was wanted by three persons. In spite of the opposition of Valentina, perhaps suspecting that it was a trap, Bernabe afraid to disobey the order supposed to have come from a higher authority, presumably the Hukbalahap organizations, went down the house and accompanied Angelo. The two men as far as she could see went in the direction of the mountain. From that time on Bernabe was never heard from nor was he seen alive.

That same night Valentina reported the kidnapping of her husband to the rural police and the next morning she herself went to the *población* and reported the matter to the municipal police of Bamban. Seventeen days later or on February 2, 1947, because of the foul smell emanating from a well about 500 meters away from the house of the deceased, the police discovered and removed from said well the partly decomposed body of Bernabe Balatbat. His remains were duly identified by his wife Valentina and his half-brother Juan Sikat by the clothes he wore, the irregular alignment of the teeth in his left lower jaw and the scars on his forehead and on his chest just below the left nipple.

When Valentina first made the report of the kidnapping on the night it was committed to the rural police and then the next morning to the municipal police of Bamban, she did not mention the appellant as the author of the said kidnapping, she having been threatened by appellant with death should she make the revelation. But after the finding of Bernabe's body and because the appellant was already arrested in connection with the kidnapping of one, Carmen Canelas, Valentina felt emboldened and safer and denounced the appellant as the one who kidnapped her husband. Investigated, the appellant in his written statement (Exhibit A) sworn to before the Justice of the Peace of Bamban admitted having kidnapped and killed the deceased by hitting him with a club from behind, near the well where the body was later on found and into which well he dumped his unconscious victim, the death having been precipitated by drowning because there was some water in the well at that time. At the suggestion of the police and with the full assent of the appellant, the latter re-enacted how he committed the crime, from the time that he led Bernabe from his house until he, the appellant clubbed him into unconsciousness with a blow from behind and then dumped him into the well.

The appellant during the trial claimed that Exhibit A was obtained from him thru force and duress, and that his re-enactment of the crime, shown on the pictures Exhibits B to B-4, was not voluntary. The lower court rejected this claim and said court in our opinion was fully warranted in doing so. According to the police authorities of Bamban who conducted the investigation and who prepared Exhibit A, the statement of Angelo contained therein was made voluntarily and without any pressure, much less intimidation or force; and when Angelo was taken before the Justice of the Peace of Bamban before whom it was sworn to, the justice of the peace read and explained the contents of the document in his native dialect and asked him if the contents were true and correct, to which he assented and when asked further if it was voluntary, he answered in the affirmative. Besides, it will be observed from Exhibit

A that he did not assume full responsibility for the killing. He implicated Valentina, the widow of the deceased, saying that he merely obeyed her orders. This circumstance is indicative of the voluntariness of the statement Exhibit A, for, had there been force and intimidation used on him, the likelihood was that he would have assumed full responsibility instead of seeking to shield himself with the alleged more guilty participation and order of Valentina, which the latter duly and emphatically denied in court. In this connection we may quote with favor a portion of the decision of the trial court regarding the probability or improbability of the appellant having been compelled and forced by the police while under detention and investigation, to do anything against his will:

"It was also proved by the prosecution that the defendant voluntarily reconstructed the crime as may be seen in the photographs Exhibits B, B–1 to B–5. The defendant alleged that this reconstruction of the crime was forced on him by the sergeant of police, Romulo Lumboy. But the Court thinks that such an allegation is unbelievable. The Court has been observing the defendant Angelo Magsilang. He is not the kind to be intimidated. His look and demeanor speak of a courageous individual. In fact it was proved that he was a Huk commander in the locality. He was at ease in his trial and did not show any sign of worry except, at the closing of the testimony of Valentina Mandal when their amorous relations were divulged by her, that the accused began to be serious and gloomy." Pp. 4–5, decision of trial court.)

The trial court found the circumstances of premeditation, treachery and nocturnity as having attended the commission of the crime but held them to be inherent in the offense. The Solicitor General excepts to this ruling and claims that premeditation was not fully established but that the two circumstances of treachery and nocturnity were present and should be considered, one to qualify the killing as murder and the other as an aggravating circumstance, thereby warranting the penalty of death. We agree with the Solicitor General except on the point of separating the circumstances of nocturnity and treachery. Except in special cases, these two circumstances always go together and are absorbed in the same offense and in the present case we believe that although there is reason to believe that nighttime was purposely sought by the appellant in committing the crime and that in dealing the blow from behind, there was treachery, the two circumstances may be regarded as complementing each other and to be considered as one circumstance only, to qualify the killing as murder. (U. S. *vs.* Salgado, 11 Phil., 56.)

In view of the foregoing, and finding no reversible error in the decision appealed from, the decision is hereby affirmed in all respects with costs against the appellant. So ordered.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, and *Tuason, JJ.,* concur.

PERFECTO, *J.*, dissenting:

PROSECUTION

Valentina Mandal, 30, widow, Bamban, Tarlac.—On the night of January 15, 1947, her husband Bernabe Balatbat was taken by the accused from their home in barrio Anupul, Bamban. At about 12 o'clock in the evening, the accused, "came to our house and waked up my husband. Then he waked me up too." When the accused called, Bernabe "did not talk because he was also afraid." (12). The accused went up to the house, which has no window shutter. "Angelo Magsilang told my husband that he is being called by three persons. My husband asked him what was the desire of those three men. Angelo Magsilang told him that he did not know but those three men were waiting for my husband. My husband lighted our lamp." (3). "I do not know whether he (Magsilang) was armed." Her husband was brought to the mountains. "I was looking at them but when they were already in the bushes, I lost sight of them." Her husband did not return. She saw him after 12 days already dead in the cemetery. She recognized him by his clothing. (4). Also by the abnormal growth of his teeth, and a scar in the left nipple. On February 3, 1947, she was informed by the municipal police of Bamban about the death of her husband. She reported the disappearance of her husband to the rural police and the munipical police of Bamban. (5). "I did not mention that it was Angelo Magsilang who took my husband because Angelo Magsilang told me that if I will report it that he was the one who took my husband, he will liquidate us all." Magsilang told her so "when I was running after them and I was preventing my husband not to follow them." The next morning she reported the matter to Romeo Lomboy, policeman of Bamban. "I told him that the outsiders took my husband." (6). She meant the Hukbalahaps. She did not inform Lomboy as to who got her husband. She informed him when her husband was already dead in February, 1947. She knows Magsilang "for a long time, because he was our neighbor and barrio mate." (7). "The next morning I asked Angelo Magsilang the whereabouts of my husband, but he told me that he was brought to the poblacion of Bamban, Tarlac. Then I reported the matter to the authorities." (8). She reported to the authorities that Magsilang kidnapped her husband "when the body of my husband was found." At that time Magsilang had already been apprehended. She does not remember having subscribed an affidavit before the Justice of the Peace Miguel Navarro. She recognized her signature in Exhibit I. (10). The day following the kidnaping, the witness went to the house of Pedro Tolentino and there she was asked by the defendant who kidnaped her husband, but she did not point at him "because I was

afraid of him." (11). "After I reported the matter I went to live in Mabalacat." While defendant was in jail, the witness, by request of the municipal police, scaled the *tinapa* which defendant ate, because defendant was then handcuffed. (12). She knows the accused as a Hukbalahap since a long time. "During the Japanese occupation he was one of the chairman of the Hukbalahaps in barrio Anupul." (15). In the conversation she had with Atanacio Garcia regarding the kidnapping of her husband she did not mention the accused because he is the brother-in-law of the accused. She reported the matter to Pedro Tolentino on the same night of January 15, 1947. (87). The body of her husband was retrieved from a well of the Santos family. (88). It was retrieved in separate parts. (90). On January 16, 1947, Angelo Magsilang was already arrested. (92). Because ordered by the police, she fed the accused in jail. "After feeding him I went away." I was not the one who ordered to kidnap my husband." (94). As for the motive of the kidnapping, the witness said "Perhaps, Angelo Magsilang wanted the advantage of my womanhood. Because during the Japanese occupation, he could do whatever he likes. He just wanted to satisfy his carnal desire with me." He had carnal intercourse with her. "I cannot tell how many times; it was a long time ago, sir, many times." (This revelation was made by the witness after the trial court told her it has noticed that she was not telling the whole truth.) (94-95). The accused "spoiled" her during the Japanese occupation. "I do not remember the date." She does not know if it was in 1942. "I do not know if it was in 1943. My husband tried to hide because of fear of Angelo Magsilang." She came to live again with her husband immediately after liberation. (96). Her husband returned to her "because perhaps Angelo Magsilang cannot do again the things which he was doing during the Japanese occupation." She reunited with her husband in 1945 and her relation with Angelo Magsilang stopped completely. Since then the defendant never bothered her. When she separated from her husband she was living in her own house. Magsilang was living in his own house. He used to go to her house only. Her husband went to his brothers. Her husband left during the Japanese occupation because Magsilang was threatening him all the time. Since then and up to the liberation, her husband has not visited their children. (98).

Romulo Lomboy, 38, married, policeman, Bamban, Tarlac.—Valentina Mandal reported to him on January 16, 1947 the kidnaping of Bernabe Balatbat. "She reported to me that her husband was kidnapped by the Hukbalahaps." At three o'clock of the same day, we went to barrio Anupul and gathered all the male persons. We investigated them as to whether they knew of the kidnapping of

Bernabe Balatbat." He did not find out who was the author. He asked Valentina Mandal who were the Hukbalahaps who kidnapped her husband. (17). In an affidavit taken from him the accused stated that he was the one who ordered the kidnapping of Bernabe Balatbat "and then struck him in the neck and dumped him in the well." Exhibit A is the affidavit. (18). The affidavit was sworn to before the Justice of the Peace. (20). The witnesses are clerks of the municipal treasurer. The corpse was found because in his affidavit Magsilang pointed that it was in a well. (21). In Exhibit A the accused stated that the body was dumped in the well. Two civilians from sitio Tete told the witness that they were smelling a bad odor from the well "and we went to find out and we retrieved and ordered the appearance of the wife." (23). Exhibit A was executed after the body of Bernabe Balatbat was retrieved. (24). Exhibits B-1 and B-2 are pictures of the reconstruction of crime. (25). B-1, B-2, B-3, B-4 and B-5. (25–26). Magsilang "told me that the wife of Bernabe Balatbat was the one who ordered him to kidnap her husband." (27). The body of the deceased was retrieved on February 3, 1947. (28).

Miguel Navarro, 32, married, lawyer, Justice of the Peace, Bamban.—"Angelo Magsilang went to my house and I gave him a copy of the affidavit (Exhibit A) to read it; and asked him if he was maltreated in the signing of the affidavit and he said no and he signed it." (32). The accused said that the contents of the affidavit were true (33). When the accused signed Exhibit A, Sgt. Romulo Lomboy was one meter from him. (34).

Gabriel Mercado, 31, married, physician, Bamban.—He knows Bernabe Balatbat since the second year of the Japanese occupation. He examined the corpse of a body found in a well on February 2, 1947. Exhibit C is his report. (37). When the body was shown to the wife at the cemetery, she recognized it already." By that examination it is impossible to recognize the person because it was already in the stage of decomposition, but in my opinion, it was the body of Bernabe Balatbat. The cause of the death was drowning. The blunt instrument with which the deceased was hit did not cause serious harm." (38). "The body was already in the stage of decomposition and it was already beyond my power to identify it. The body was already disarranged." I could not find any scar on the body of the deceased, because the body "was already sloppy." (39). He concluded that it was the body of Bernabe Balatbat "after the information from the wife." (40).

Juan Sikat, 43, married, laborer, Mabalacat.—He is the maternal brother of Bernabe Balatbat. After the kidnaping he saw the body of Bernabe Balatbat in the ceme-

tery in Bamban. (41). He recognized it by the irregular growth of his teeth and the scar on the left of his nipple. "I found also the scar in his forehead which he suffered in his student days." (42).

DEFENSE

Pedro Tolentino, 20, laborer, Bamban.—On January 1, 1947, at midnight, Valentina Mandal reported to him that her husband was kidnapped. She did not tell who were the kidnapers. (46). The witness was a rural policeman and the next morning he reported the matter to the authorities in Bamban. (47).

Atanacio Garcia, 39, married, laborer, Mamatigan, Bamban, Tarlac.—On January 6, 1947, Valentina Mandal "went to my house. She was asking me for her husband and I told her that I had not seen her husband." She told him that her husband was taken by the Hukbalahaps. (55).

Teodora Tolentino, 50, married, Bamban.—On the night of January 15, 1947, "somebody came to our house calling and then I waked up my husband." They were three and they were asking for the house of Bernabe Balatbat. "I showed the house." They ordered the husband of Valentina Mandal to come down. (58). The one who ordered was being called as Pabling. "My husband went with them." (59). They went to the house of Bernabe Balatbat. "My husband returned but I did not see any more those people." (60). The witness is the wife of the accused. The distance of the house of the witness from the house of Bernabe Balatbat was about 30 meters. (61). Because those people did not know the house of Bernabe Balatbat, her husband pointed it. (62).

Angelo Magsilang, 47, married, farm laborer, Bamban, —"On the night of January 15, 1947, somebody came to the house to wake me up." (66). "My wife was awakened first, and she told them what they wanted. They asked my wife whether she has a male companion. My wife told them "yes, my husband is here," and after telling that to them they ordered me to come down. They asked me the house of Bernabe Balatbat. I brought them to the house of Bernabe Balatbat. "When I came down they took him. After their conversation, they went away and I also went away. They were three." They were armed. He was ordered by the three to go home. (68). He went home to sleep. The next morning he had occasion to talk with Valentina Mandal. She did not tell him anything about the kidnaping of her husband. (69). I met Valentina Mandal in the house of her brother-in-law. When Valentina said that her husband was threatening to kill her, she requested Pabling to reprimand her husband. (70). The signature in Exhibit A is his. "On February 3, they brought me out from the jail and they brought me upstairs

of the municipal building and covered my eyes and tied my hands on the back. While I was tied Romulo Lomboy took the declaration." He was asked whether he knows how Bernabe Balatbat was kidnapped. And when he answered no "they began to box me until I fell to the floor almost unconscious." "He was boxed in the belly." (72). The investigation lasted one hour. The answers in Exhibit A was not given by him. He consented to sign because Romulo Lomboy told him that if he did not sign the CID will come in the evening and maltreat him again. (74). The reconstruction appearing in Exhibits B-2, B-3, B-4, and B-5 was made because "they ordered me only to do that." (75).

The evidence do not show the guilt of the appellant beyond all reasonable doubt.

No other witness has been called to testify about the alleged taking of Bernabe Balatbat but his widow who has not been corroborated by any other witness. According to her, although appellant said that her husband was needed by three men, she did not say having seen any other man taking her husband except appellant, in whose possession she did not see any arms. When the deceased and appellant were going away, she even followed them, so much so that appellant had the opportunity of telling her not to report the matter, because he will liquidate "us all." She has been looking at them until they were lost in the bushes from her sight. It is incredible that appellant, without arms, could have singlehandedly kidnapped Bernabe Balatbat, without the latter offering any resistance, as it is made to appear by his widow, when he had the advantage of the help that his wife could have offered him. The help could not have been neglible because she was 30 years old, which is about the prime of life. Under the circumstances, it would have been easy for Bernabe Balatbat and his wife to resist the kidnaping, if not to have completely overpowered the kidnaper. There is nothing in the record to show why a single unarmed man could overpower a couple of persons in normal health.

The fact that Valentina Mandal, in denouncing the kidnaping of her husband, did not disclose that it was appellant who effected it is inconsistent with her testimony that it was appellant who was the author of the kidnaping. Her explanation that appellant menaced her with liquidation if she reported the matter is no acceptable explanation for her failure to point the appellant as the guilty one. She defied the menace by reporting the kidnapping right on the same night of the incident. In reporting it, she could have only two purposes, to have her husband rescued and the culprit punished. Either or both. And the most logical move for her to attain either or both purposes was to point right away who the kidnaper was, if she has iden-

tified him. Her failure then to mention the accused, at least, gives strong ground to doubt her claim that it was the accused who kidnapped her husband.

Furthermore, as to her allegation that she decided to point the accused as the kidnaper it was because the accused was already arrested, why did she not have him arrested immediately, if not on the same night of the kidnaping, the next morning when she met him in the house of Pedro Tolentino, the rural policeman, or when she reported the kidnaping to the municipal police of Bamban? Then her alleged fears could have been easily allayed. And it was easy for appellant to have been arrested because he continued living in his house at a short distance from the house of Valentina.

Accepting her claim that, during the Japanese occupation, she became the paramour of the appellant for two years, during which her husband had to leave her and to stay with his brothers, while the accused continued living with his wife and only used to go to the house of Valentina, who was living along with her children, depicts a moral character highly suspicious as source of truth. No sensible explanation was given why Valentina and her children could not have followed him and thus completely elude the amorous advances of the accused. The fact that she yielded to the accused and endured two years of life of shame with him, without exerting efforts to free herself from such opprobrium necessarily would taint her veracity as a witness, because it takes less compunction to tell what is not true than to betray her husband and to endure or enjoy two long years of shame.

Once discarded the testimony of Valentina Mandal the only evidence that remains against appellant is the written statement taken from him by policeman Romulo Lomboy, but appellant testified that he was compelled to affix his signature in Exhibit A due to his being maltreated, and this weakens the evidence to the extent of making it insufficient as a basis to imprison a man for life.

We vote to acquit appellant.

Judgment affirmed.

[Nos. L-2147 and L-2148. December 9, 1948]

IGNACIO M. COINGCO, petitioner, *vs.* ROBERTA FLORES, respondent

1. APPEAL; REVIEW OF FINDINGS OF FACT OF COURT OF APPEALS.—The Supreme Court can not revise and disturb the finding of fact of the Court of Appeals to the effect that "although it is not likely that the appellee has been forcibly coerced into signing the same, we are inclined to credit her explanation that she had to do so to escape her husband's continued maltreatment (that is, that it was not voluntarily made), and that the partition was never enforced."

2. ID.; MOTION FOR RECONSIDERATION; QUESTION NOT RAISED IN THE RECORDS.—The Supreme Court can not properly pass upon question (1) which was not put in issue in the pleadings and passed upon by the Court of First Instance; (2) not assigned as erroneous on appeal to the Court of Appeals, and consequently not considered by the latter; and (3) not raised even in the petition for certiorari filed with this court.
3. HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; DESTRUCTION OF BUILDINGS ERECTED DURING COVERTURE ON LAND BELONGING TO ONE OF THE SPOUSES.—If there were buildings erected on the lands which were paraphernal personal property of the appellee during the latter's marriage with the appellant, and such buildings were destroyed by reason of the recent war, before the liquidation of the conjugal partnership of both spouses, it is obvious that the conjugal partnership did not *ipso facto* acquire the land from the time of the construction of the buildings, so as to make afterwards the land without any buildings a conjugal property irrespective of the result of the liquidation of the conjugal partnership.
4. ID.; ID.; SECOND PARAGRAPH, ARTICLE 1404, CIVIL CODE, CONSTRUED.—The principle or reason underlying the provision of the second paragraph of article 1404 of the Civil Code regarding the right of the conjugal partnership to acquire the land belonging to one of the spouses on which a building is constructed during the marriage, is exactly the same (but the inverse) as that on which rests the right of accession with respect to real or personal property which is united to another in such manner as to form a single object.
5. PROPERTY; ACCESSION, GENERAL RULE OF; EXCEPTION.—The general rule is that the owner of the land on which a thing is built by another in good faith, has the right to acquire the thing built under the terms and conditions provided by law, in order to avoid the inconvenience of the land being owned by one person and the building by another. But in order to encourage the construction of buildings during the marriage on vacant lands belonging to one of the spouses, the legislators deemed it convenient to enact said provisions of article 1404 as an exception to article 361 (Tabotabo *vs.* Molero, 22 Phil., 418), that gives the conjugal partnership the right to acquire the land by paying the value of the land.
6. ID.; ID.; DESTRUCTION OF BUILDING CONSTRUCTED ON ANOTHER'S LAND.—If the building constructed on another's land is destroyed or disappeared before the owner of the land has exercised his right to appropriate the building under article 361 by paying the expenses or value of the thing built or before the liquidation of the conjugal partnership when payment of the value of the land should be credited to the parapherna or capital of the spouse to whom the land belongs, if there remain funds sufficient to cover the value of the building and land, no accession may take place because then there would be no longer a single object constituted by the union of two things belonging to different owners.
7. HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; CONSTRUCTION OF BUILDING DURING MARRIAGE ON A SPOUSE'S LAND DOES NOT "IPSO FACTO" MAKE LAND CONJUGAL PARTNERSHIP.—"Of course, during the marriage the buildings constructed on the private land belonging to one of the spouses, are legally conjugal in nature, but upon the dissolution of the partnership, that building will or will not be conjugal, depending upon the result of the liquidation of the conjugal partnership, because it is only in that stage when profits can be spoken of, when after paying the partners and the creditors there still remain something to be divided."

RESOLUTION on a motion for reconsideration.

The facts are stated in the opinion of the court.

Ramon Diokno for petitioner.

FERIA, *J.:*

This is a motion for reconsideration of the minute resolution of the court which dismissed the appellant's appeal by certiorari from the decision of the Court of Appeals in cases Nos. 936-R and 279-R, on the ground "that the questions involved are of fact." Because the so called questions of law is either unsubstantial or can not be passed upon by this Court on appeal.

The first question raised regarding the validity of the extrajudicial partition agreement made by both parties in which the lots in question were listed as conjugal property made before the marriage bond had been dissolved, is so unmeritorious that the appellant's attorney after raising said question immediately submits the question whether, assuming that it is invalid, the statement made therein regarding the ownership of said lot can not be deemed to be an admission of the parties. In this connection it is sufficient to say that we can not revise and disturb the finding of fact of the Court of Appeals to the effect that "although it is not likely that the appellee has been forcibly coerced into signing the same, we are inclined to credit her explanation that she had to do so to escape her husband's continued maltreatment (that is, that it was not voluntarily made), and that the partition was never enforced."

The second question raised in the motion for reconsideration is, whether the presumption that the properties in litigation are conjugal properties because they were acquired during coverture, may be sufficiently rebutted by any one of the following facts: (1) that the title to them are in the name of the wife alone; (2) that the husband gave his marital consent to their being mortgaged by the wife; and (3) that the wife was financially able to buy those properties. While it is true that each one of them, taken separately, may not be sufficient to overcome the above quoted presumption, established by article 1407 of the Civil Code, it is nonetheless true that all of them taken together, with all the other facts and circumstances established by the evidence, might be, and were, considered by the lower court as sufficient to rebut the said presumption. The other facts and circumstances taken into consideration by the Court of Appeals together with the three above enumerated are, among others, that "two other lots (those mentioned in items 3 and 5) which were also acquired during coverture were put in the name of the spouses as conjugal property." We can not revise and correct the finding of the lower court that all those facts were established by the evidence.

And the third question raised is that the lots in question, assuming them to be paraphernal, automatically became conjugal from the moment that buildings were constructed thereon, although the buildings were destroyed during the recent war and before the liquidation of the conjugal partnership. We can not properly pass upon this question because: (1) it was not put in issue in the pleadings and passed upon by the Court of First Instance; (2) not assigned as erroneous on appeal to the Court of Appeals, and consequently not considered by the latter; and (3) not raised even in the petition for certiorari filed with this Court.

But although this Court does not, for the above reasons, consider it necessary to pass upon this last question, the writer of this resolution is of the opinion that it must be answered in the negative.

If there were buildings erected on the lands which were paraphernal personal property of the appellee during the latter's marriage with the appellant, and such buildings were destroyed by reason of the recent war, before the liquidation of the conjugal partnership of both spouses, it is obvious that the conjugal partnership did not *ipso facto* acquire the land from the time of the construction of the buildings, so as to make afterwards the land without any buildings a conjugal property irrespective of the result of the liquidation of the conjugal partnership.

The principle or reason underlying the provision of the second paragraph of Article 1404 of the Civil Code regarding the right of the conjugal partnership to acquire the land belonging to one of the spouses on which a building is constructed during the marriage, is exactly the same (but the inverse) as that on which rests the right of accession with respect to real or personal property which is united to another in such manner as to form a single object.

The general rule is that the owner of the land on which a thing is built by another in good faith, has the right to acquire the thing built under the terms and conditions provided by law, in order to avoid the inconvenience of the land being owned by one person and the building by another. But in order to encourage the construction of buildings during the marriage on vacant lands belonging to one of the spouses, the legislators deemed it convenient to enact said provisions of article 1404 as an exception to article 361 (Tabotabo *vs.* Molero, 22 Phil., 418), that gives the conjugal partnership the right to acquire the land by paying the value of the land. But if the building constructed on another's land is destroyed or disappeared before the owner of the land has exercised his right to appropriate the building under article 361 by paying the expenses or value of the thing built or before the liquidation of the

conjugal partnership when payment of the value of the land should be credited to the parapherna or capital of the spouse to whom the land belongs, if there remain funds sufficient to cover the value of the building and land, no accession may take place because then there would be no longer a single object constituted by the union of two things belonging to different owners.

According to the provision of article 1424 of the Civil Code "after the deductions from the inventoried estate specified in the preceding article, the remainder estate shall constitute the assets of the conjugal partnership," that is, the remainder, if any, after the dowry and the parapherna of the wife, the debts, charges, and obligations of the partnership, and the capital of the husband have been paid, pursuant to articles 1422 and 1423 of the said Code.

Therefore, the construction of a building during marriage on land belonging to one of the spouses does not *ipso facto* make the land a conjugal property, because as the Supreme Court of Spain well said, in its sentence of May 27, 1905, quoted by Manresa in his commentary on article 1404 of the Civil Code, holds that, "of course, during the marriage the buildings constructed on the private land belonging to one of the spouses, are legally conjugal in nature, but upon the dissolution of the partnership, that building will or will not be conjugal, depending upon the result of the liquidation of the conjugal partnership, because it is only in that stage when profits can be spoken of, when after paying the partners and the creditors there still remain something to be divided." (Civil Code of Spain, fourth edition, Vol. 9, p. 530.)

In the case decided in said sentence of the Supreme Court of Spain, a building was constructed during the marriage of Doña Agustina San Vicente Flores and Juan Bautista Arriaza y Arriaza on a land belonging to the latter. After the death of said Doña Agustina her husband sold the land and building to another, and after his death the heirs of Doña Agustina San Vicente Flores filed an action to recover half of the property sold by the deceased D. Juan Bautista Arriaza y Arriaza, on the ground that they were entitled to one-half of the land and building because they were conjugal property, and the vendor could not have sold it validly to the purchaser. The Supreme Court of Spain, in deciding the question in issue, held among others the following:

"Considering that although the buildings constructed during the marriage on the lot of one of the spouses, the cost of the lot being paid to the spouse who owns it, as well as all properties acquired during the marriage unless they are proven to privately belong to the husband or to the wife, are conjugal, it is a settled doctrine of this Court founded before on the Revised Laws and now on the provisions of the Civil Code, that for the purpose of finding if there are any conjugal properties in a conjugal partnership, it is absolutely necessary

to have the liquidation of the assets of the same, because it is only after such liquidation when it can be determined whether there is any property which is conjugal and should be owned by and assigned to the partners; and as in the present case such liquidation was not made in order to show that, after the debts, incumbrances and obligations of the partnership had been setteld, there still remained properties that should be delivered to the plaintffs, and if those consisted of the very half of the house which they seek to recover, it is clear, as set forth in the decision, that the ownership of the half of the property was not in any way established, which property is supposed by them to belong to Mrs. Agustina San Vicente, and is claimed by them as her successors in interest." (Jurisprudencia Civil, Vol. 101, pp. 475, 476; 1905.)

Motion for reconsideration is therefore denied.

Páras, Briones, and *Tuason JJ.*, concur.

PABLO, *M.:*

Concurro con la parte dispositiva de la resolución.

BENGZON, *J.:*

I concur. But I reserve my opinion on the application of article 1404 of the Civil Code.

PERFECTO, *J.*, dissenting:

We are of opinion that the resolution of dismissal should be set aside and the petition given due course. There cannot be any dispute that the petition raises several questions of law, as stressed in the motion for reconsideration, where, among others, petitioners say:

"But even granting, without however conceding that those lands were paraphernal, nevertheless it is admitted that buildings were constructed thereon during coverture which buildings were later destroyed.

"Is it not true that according to article 1404 of the Civil Code those lots automatically become conjugal property from the moment that buildings were constructed thereon?"

Upon this question the members of this Court have devoted considerable time in discussing the opposing views on the matter and we are not supposed to waste time on a question which is not before our consideration.

Now we propose to state our position on the question.

The conjugal partnership is the usufructuary of the wife's paraphernal and of the husband's exclusive properties. This is the basic principle underlying the conjugal partnership system, for article 1385, Civil Code provides that the fruits of paraphernal and exclusive properties are conjugal assets, and article 1401, paragraphs 2 and 3, provide that all income, whether they are derived from the separate property of either spouse or from their industry belong to the conjugal partnership.

Under article 361, Civil Code, which is the general rule on accession, the owner of the land becomes the owner of the improvements after payment of the value of said improvements. The land is the principal and the improve-

ments are the accessory, and the latter therefore belong to the owner of the principal (articles 353, 358, Civil Code). Article 1404, paragraph 2, Civil Code, however, is admittedly an exception to articles 358 and 361, Civil Code.—

"Obsérvese que este precepto del segundo párrafo del artículo 1404 *se aparta de la regla general* sobre la materia, consignada en el artículo 358 (1), y por su índole *excepcional* * * *." (Sanchez Roman, Vol. 5, p. 841; italics ours.)

Under the specific provision of article 1404, paragraph 2, Civil Code, the building constructed by the partnership is the principal and the lot of either spouse is the accessory. Hence the lot, which is the *accessory, follows the ownership of the principal,* which is the conjugal partnership property, and the spouse owning the lot is only entitled to the payment of its value—

"Los edificios se consideran un accesorio del suelo, y construidos a expensas de la sociedad de gananciales, cederían, con arreglo al párrafo primero del artículo que nos ocupa, en favor del cónyuge propietario del solar, sin perjuicio de la indemnización correspondiente. "*El artículo cambia la doctrina;* los edificios construidos durante el matrimonio en suelo propio de uno de los cónyuges son gananciales, abonándose el valor del suelo al cónyuge a quien pertenezca." (Manresa, vol. 9, p. 625; italics ours.)

Accordingly, under said article 1404, paragraph 2, Civil Code, the conjugal partnership is not the *usufructuary* of the lot of one of the spouses, but the conjugal partnership is the *owner* of said lot, and the spouse who owns the lot is only entitled to indemnity for its value.

The view is advanced that the ownership of the lot is retained by the owner-spouse until he is paid the value of the lot. Does this mean that payment of the value is a condition *sine qua non* for the transfer of ownership? Such a theory would seem to be contrary to the basic principle in Civil Law that the *mode* of acquiring ownership (article 609, Civil Code) is not payment but tradition, for what transfers ownership (article 609, paragraph 2, Civil Code) is delivery (article 1095, Civil Code), not payment. The actual payment of the value is not a condition precedent for the transfer of ownership. Such a transfer of title may take place even without payment, as when the sale or conveyance is made on credit and a term for payment is agreed upon. (Articles 1466, 1467, Civil Code.) Title is thereby transferred, and the transferor only becomes a *creditor* for the value or the agreed price. Payment is not indispensable for the acquisition of title. (Article 1468, Civil Code.) The conjugal partnership upon constructing the conjugal buildings on the wife's paraphernal lot or on the husband's exclusive lot had taken actual control, possession and delivery of said lot (article 1462, Civil Code) sufficient to transfer ownership, which is expressly recognized by the exceptional provision of article 1404, paragraph 2, Civil Code. The

right of the husband or of the wife as creditor for the value of the lot is likewise recognized by said provision of law—"abonándose el valor del suelo."

But what is the value of the paraphernal or exclusive lot taken by the conjugal partnership in constructing the buildings? The value must be determined as of the date of the taking. The recognized rule for determining the indemnity to owners of land taken under the power of eminent domain may be applied by analogy and with force to the present inquiry.

"But the constitution does not require a disregard of the mode of ownership * * * it merely requires that an owner of the property taken should be paid for what is taken from him. * * * And the question is *what has the owner lost, not what has the taker gained.*" (Boston Chamber of Commerce *vs.* City of Boston, 217 U. S., 190, at 195, italics ours.)

"The value of the property was enhanced by the purpose for which it was taken. The owners of the land have no right to recover damages for this *unearned increment* resulting from the construction of the public improvement for which the land was taken. To permit them to do so would be to allow them to recover more than the *value of the land at the time when it was taken,* which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements." (Provincial Government of Rizal *vs.* Caro de Araullo, 58 Phil., 308, 316; italics ours.)

Does the probability that the wife or the husband would not demand payment of the lot during marriage necessarily alter the basis for determining the value of indemnity due the wife or the husband for her paraphernal or his exclusive lot? There is absolutely no prohibition, legal or moral, express or implied, to prevent the wife or the husband from demanding payment of the value of the lot during the marriage. Particularly so, when the wife can now freely dispose of her paraphernal property or funds, even without or against the will of her husband (article 1387 as amended by Act No. 3922). True, that in the normal life of a Filipino family, the wife or the husband would not probably demand payment of the value of the lot during marriage (unless she really decides to dispose of the same without the husband's consent), because as a matter of fact she relies on her husband's management and as a matter of law, whatever fruits the paraphernal or exclusive lot would yield or whatever income is derived therefrom will perforce belong to the conjugal partnership.

It is admitted that the purpose of article 1404, paragraph 2, Civil Code is to encourage constructions by either of the spouses.

"El artículo le presenta un cebo o cstímulo para que edifique." (Manresa, vol. 9, p. 625.)

What incentive will the spouse have, what benefit will the conjugal partnership derive, by making the construction, if the increase in value of the spouse's lot would still redound to the sole benefit of said spouse as paraphernal

or exclusive increment? The interpretation that the spouse retains the ownership until the value of the land is paid to him would render article 1404, paragraph 2, Civil Code nugatory, because without said provision, the spouse would, under the general rule, retain ownership of the lot and benefit by its increase in value. Ordinarily the improvements do not increase in value with time, but on the contrary they greatly depreciate in value. The conjugal partnership, therefore, would not benefit by any increase in value of the property, because any such increase would really be due to the lot. The value of property may increase or decrease from the time of constructing the buildings. If it decreases, the loss would be suffered by the conjugal partnership. If it increases, the benefit should also inure or accrue to the conjugal partnership and not to one spouse alone. The increase is not to be enjoyed by one spouse alone, because said increase is conjugal, and both spouses share in the increase by an equal one-half.

Manresa states—

"* * * (el marido) tiene los mismos derechos y esperanzas que la mujer para ser propietario del edificio y la seguridad de que en el caso contrario se reputara ganancia todo lo que más valga el edificio por cualquier genero de gastos, * * *" (Manresa, vol. 9, pp. 625–626.)

Article 1404, paragraph 2, Civil Code is not a specific provision to merely repeat the general rule. It is admittedly an exception. (Dominado *vs.* Dorayunan, 49 Phil., 452 459.) Its purpose is to encourage improvements by constructing buildings on vacant lots and that purpose is best achieved by providing, as the law actually provides, that the conjugal partnership becomes the owner of the property; and, therefore, whatever increase in the value the property acquires should belong to the conjugal partnership—

"*El aumento de valor* por mejoras hechas en el patrimonio de uno de los cónyuges, dice el art. 1485 del Codigo de Venezuela, con anticipaciones de la sociedad o por la industria de cualquiera de los cónyuges, *pertenece a la sociedad.*" (Manresa, vol. 9, p. 622; italics ours.)

If the lot of one spouse were rented by a third party, the income would automatically be conjugal (article 1385, article 1408 paragraph 3). The conjugal partnership that builds on said lot does not pay rent, not because the partnership is its *usufructuary* but because of the exceptional reason that the conjugal partnership becomes the *owner* of said lot, for under the special provision of article 1404, paragraph 2, Civil Code, the partnership is not the usufructuary but the owner of the property. The spouse owning the lot merely becomes a *creditor* for the value of said lot. This credit cannot, however, increase with the increase in value of the property, because any such increase or profit should accrue in favor of the conjugal partnership.

The portion of the commentary of Sanchez Roman to the effect that the rights of the spouse are remitted to the dissolution and liquidation of the conjugal partnership, expressly refers to—

"La existencia *normal* dc la sociedad legal de gananciales."

But according to the same recognized authority on Civil Law, article 1404, paragraph 2, Civil Code is—

"por índole excepcional" * * * "se aparta de la regla general" (S. R. vol. 5, p. 841).

Article 1404, paragraph 2, therefore, does not involve the *normal* existence of a conjugal partnership, and the general rule on dissolution cannot apply to said specific exception.

Likewise the portion of Manresa's commentary refers to "*el valor fijado a los bienes,*" commenting on the dissolution of the conjugal partnership (article 1418, Civil Code). It does not refer to the indemnity or reimbursement for the value of the lot under article 1404, paragraph 2, Civil Code—

"Abonándose el *valor* del suelo."

The interpretation of article 1404, paragraph 2, Civil Code herein advanced is supported by judicial authority in the case of Lim *vs.* Garcia, 7 Phil., 320. It also finds support in the case of Rivera *vs.* Batallones, 40 Off. Gaz., No. 10, p. 2095. These two cases have held that the increase in the price of the *paraphernal* lot and the increment to paraphernal *shares of stock* do not belong to the private property of said spouse, but to the conjugal partnership. There is, therefore, no doubt that such property becomes conjugal at the time of the erection of the building with conjugal funds, and the spouse who owned it does not continue to have title thereto.

"El solar origen del recurso, adquirido a título gratuito durante el matrimonio por Da. Dolores Guijarro, he entrado, como lo reconocen notario y registrador, a formar parte de los bienes gananciales, con arreglo al párrafo 2.º del art. 1404 del Código Civil, por la construcción de un edificio, y este cambio en la situación jurídica, derivado de hechos exteriores al Registro, no necesita otra justificación que la implicita en las manifestaciones auténticas de los cónyuges, toda vez que sus declaraciones acreditan el consentimiento de quienes, según el Registro, están autorizados para enajenar los bienes, ya se reputen gananciales, ya se estime que continuan siendo parafernales, con arreglo a la inexacta inscripción vigente." (Resol. 15 Julio, 1918—Gaceta 31 Octubre; Apéndice de 1918, Enciclopedia Jurídica Española, por Mouton y Ocampo etc., pág. 66.)

The disappearance of the building constructed by one spouse on a parcel of land belonging to the other, caused by fire or destruction, does not have the effect of reverting the land to the ownership of the spouse who owned it, because a reversion implies that the title thereto had been changed, as advanced in this opinion, to wit: from paraphernal or exclusive to conjugal, and because such rever-

sion or change of title must be by virtue of law or by the will of its owner. There is no law providing for such reversion; neither is there an act of the husband, in behalf of the conjugal partnership, which would make a conjugal property paraphernal or exclusive. Even in the matter of presumptions, the law presumes the continuance of the same status of a person or thing until the contrary is proved. The proof of the change of status of a paraphernal or exclusive land which had become conjugal by the construction of a building thereon with conjugal funds, would be the act of the husband reconveying it to the wife for a consideration, or a law which provides that the disappearance of the building thus constructed has the effect of reverting the land to its status prior to its becoming conjugal.

Motion denied.

[No. L-2658. December 9, 1948]

EPIFANIO BARADI, petitioner, *vs.* THE PEOPLE OF THE PHILIPPINES, respondent

APPEAL; FAILURE TO FILE BRIEF ON TIME; DISMISSAL OF APPEAL "MOTU PROPRIO"; NOTICE TO APPELLANT.—The Court of Appeals has discretion to dismiss *motu proprio* an appeal for failure on the part of the appellant to file his brief on time, but the Court of Appeals must have a notice served upon the defendant-appellant of the action to be taken by said Court before dismissing *motu proprio* the appeal. The purpose of such a notice is to give the appellant opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory.

PETITION for review on certiorari.

The facts are stated in the opinion of the court.

Jesus Z. Valensuela for petitioner.

FERIA, *J.:*

This is a petition for certiorari to appeal from the order of the Court of Appeals which dismisses the petitioner's appeal from the sentence of the Court of First Instance of Manila, because of the failure of the appellant to file his brief on time.

Section 8, Rule 120 of the Rules of Court provides:

"SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.*—The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the defendant is represented by an attorney *de oficio.*

"The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

According to the above quoted provisions, the Court of Appeals has discretion to dismiss *motu proprio* an appeal for failure on the part of the appellant to file his brief on time, but the Court of Appeals must have a notice served upon the defendant and appellant of the action to be taken by said Court before dismissing *motu proprio* the appeal. The purpose of such a notice is to give the appellant opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory.

In the present case, although it does not appear from the petition that the Court of Appeals had given the appellant such notice before dismissing his appeal, as the petitioner has filed a motion for reconsideration of, or to set aside, the order dismissing his appeal, in which he stated the reasons why he failed to file his brief on time, and the Court of Appeals denied the motion for considering said reasons not satisfactory, the filing of such a motion has cured any defect or failure to comply, if any, with the notice required by said section 8, Rule 120, because if the notice had been given the same reasons would have been alleged by the appellant.

Therefore the petition is denied. So ordered.

Moran, C. J., Pablo, Perfecto, Bengzon, Briones, Tuason. and *Montemayor, JJ.,* concur.

PARÁS, *J.,* dissenting:

The petition alleges that Epifanio Baradi was assisted by Atty. Fidel A. Santiago at the trial of the case in the Court of First Instance of Manila. When the *expediente* was elevated to the Court of Appeals, the clerk did not advise the appellate court that Attorney Santiago was to continue defending the appellant on appeal. However, notice to file the brief was sent to said attorney, who did nothing until the reglementary period had elapsed and the appeal was dismissed. Within 15 days Atty. Jesus Z. Valenzuela appeared for the first time for appellant Baradi, explained that Santiago was never the attorney on appeal, and accordingly sought the reconsideration of the order of dismissal. This was denied.

In my opinion, the appeal should not have been dismissed under the circumstances of the case. The Court of Appeals cited section 2 of Rule 48 of the Rules of Court providing that "Attorneys and guardians *ad litem* of the respective parties in the court below shall be considered as the attorneys and guardians of the same parties respectively in the Court of Appeals until others are appointed and notice thereof is served on the adverse party." As regards criminal cases, however, it is provided that "The appellate court may, upon motion of the appellee or on

its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the defendant is represented by an attorney *de officio*." (Rule of Court 120, section 8.) It is here admitted that no such notice had been served on the appellant before the Court of Appeals dismissed his appeal. But the majority contends that, upon the filing of the motion for reconsideration, lack of notice had been cured. This procedure in effect requires appellants themselves to justify dismissals made in violation of said section 8. Suppose the herein petitioner (Baradi) did not file any motion for reconsideration. The majority, to be consistent, would of course set aside the dismissal complained of, regardless of the reason for appellant's failure to file his brief; and the result would be that appellants, whose appeals have been dismissed without the required previous notice, may outsmart the Court of Appeals by not filing a motion for reconsideration and by seeking relief directly from the Supreme Court. At any rate, even admitting the correctness of the majority's position, I believe that the Court of Appeals erred in denying the petitioner's motion for reconsideration.

Petition denied.

[No. L-2503. December 10, 1948]

CRESENCIO RUBEN TOLENTINO, petitioner and appellant, *vs.* CESARIO CATOY, Provincial Warden, Batangas, Batangas, respondent and appellee.

1. HABEAS CORPUS; AMNESTY; COURTS TO PROTECT ONE'S RIGHT TO AMNESTY IF EXECUTIVE OFFICERS FAIL TO ACT.—If the petitioner is entitled to the benefits of this proclamation and he is unable to obtain his release through executive channels, it devolves on the courts to protect his rights. This is a fundamental right which cannot be left to the decision of executive officers.
2. ID.; ID.; IMPLEMENTATION COMMITTEE, CREATION AND PURPOSE OF.—The committee was appointed by the Secretary of Justice as an instrumentality to facilitate, not to hinder or obstruct, the carrying out of the provisions of the amnesty.
3. ID.; ID.; EXTENT AND SCOPE.—The majority of the Court believe that by its context and pervading spirit the proclamation extends to all members of the Hukbalahap and PKM organizations. It makes no exception when it announces that the amnesty is proclaimed "in favor of the leaders and members of the associations known as Hukbalahap and Pambansang Kaisahan ñg Magbubukid." No compelling reason is apparent for excluding Hukbalahaps of any class or condition from its object, which is "to forgive, and forego the prosecution of the crimes of rebellion, sedition, etc.," as a "just and wise measure of the Government." We are to suppose that the President and the Congress, knowing that a good number of Hukbalahap and PKM affiliates had been or were being prosecuted, would have, in clear terms, left them out if that had been the intention, instead of leaving their exclusion to inference.
4. ID.; ID.; HUKBALAHAPS WHO ARE IN PRISONS, ARE INCLUDED.—If total punishment is foregone in favor of Hukbalahaps who

succeeded in evading arrest, it stands to reason that those who fell into the clutches of the law have better claim to clemency for the remaining portion of a punishment fixed for the same offense.

5. ID.; OBJECT OF AMNESTY.—The avowed practical objective of the amnesty is to secure pledge of loyalty and obedience to the constituted authorities and encourage resumption of lawful pursuits and occupation. This objective can not be expected to meet with full success without the goodwill and coöperation of the Hukbalahaps who have become more embittered by their capture, prosecution and incarceration. It was known that those dissidents who had been arrested and prosecuted were not going to remain in jail forever, and that discrimination against them might in itself be a driving force for them and their sympathizers to take up arm again.

6. PARDON AND AMNESTY DISTINGUISHED.—Fundamentally and in their utmost effect, pardon and amnesty are synonymous. Mr. Justice Field in Knote *vs.* United States (24 Law. ed., 442, 443), said that "the distinction between them is one rather of philological interest than of legal importance." It seems to be generally conceded in the United States that the word "'pardon' includes amnesty." (State *vs.* Aby, 71 S. W. 61.) This being so, the rules for interpreting pardon and amnesty ought not to vary. Now then, according to a well-recognized doctrine, pardon is construed "most strictly against the state." "Where general words are used, their natural meaning is not to be restricted by other words unless the intention to do so is clear and manifest." (46 C. J., 1192.)

APPEAL from a judgment of the Court of First Instance of Batangas. Enriquez, J.

The facts are stated in the opinion of the court.

Ramon Diokno and *Jose W. Diokno* for petitioner-appellant.

Solicitor General Felix Bautista Angelo, First Assistant Solicitor General Roberto A. Gianzon, Solicitor Jose G. Bautista, and *Assistant Provincial Fiscal Geminiano G. Beloso* for respondent-appellee.

TUASON, *J.:*

This is an appeal from a decision denying an application for the writ of habeas corpus.

Petitioner was a Hukbalahap and was found by the Court of First Instance of Batangas guilty of the crime of illegal assembly held in furtherance of the Hukbalahap designs. The judgment was promulgated on May 11, 1948.

On June 21, the President issued Proclamation No. 76 granting amnesty under certain conditions to leaders and members of the Hukbalahap and the PKM organizations. On July 16, within the 20-day period for surrender imposed as a condition by the amnesty, the petitioner, already serving sentence, sent the President a petition for his release under the provisions of the proclamation. No action was taken on this petition and the petitioner came to court with the present application.

Judge Juan Enriquez, who heard and decided the petition in the court below, was of the opinion that "the petitioner is clearly covered by the amnesty proclamation" but refused to grant the writ because "he (petitioner) has failed to follow the procedure outlined by the implementing circulars (of the Secretary of Justice) so that he may avail of the benefits thereof." He called attention to the fact that circular No. 27–A "vests the release of such prisoners on the Committee on the Implementation of the Amnesty Proclamation No. 76 in Manila, instead of the President." He gives to understand that only this committee is authorized to order the discharge of convicted Hukbalahaps under the proclamation.

If the petitioner is entitled to the benefits of this proclamation and he is unable to obtain his release through executive channels, it devolves on the courts to protect his rights. This is a fundamental right which cannot be left to the decision of executive officers. This should be especially true where, as in this case, the implementation committee was not the creation of the proclamation nor was it even mentioned in this document. The committee was appointed by the Secretary of Justice as an instrumentality to facilitate, not to hinder or obstruct, the carrying out of the provisions of the amnesty.

Let it be said that the Solicitor General does not seem to agree with the lower court's theory, having passed it up. The law officer of the Government bases his opposition to the petition under consideration on a different ground—that the petitioner did not present any arm. He thus raises only a question of fact, and this was the only question which the respondent argued at the hearings before this Court.

There is attached to the record of the Court of First Instance a certificate drawn in the form prescribed in the Secretary of Justice's circulars and signed by the Commanding Officer of the Constabulary in Batangas, stating that on July 10, petitioner presented himself with a Remington .45 caliber pistol and ammunition. The Provincial Fiscal who appeared with Solicitor Bautista of the Solicitor General's office admitted the authenticity of the Constabulary Commanding Officer's and the petitioner's signatures affixed to the certificate. In impugning this paper, he said it was not seen by him when the case was tried and submitted in the lower court. He also said that the firearm mentioned in the certificate belonged to another man and had been surrendered by the latter.

That the fiscal did not see the certificate is no authority for the allegation that it was not there. It is to be kept in mind that no oral evidence was introduced, the case having been submitted for decision on the pleadings and their annexes. Judge Enriquez's opinion that the petitioner comes within the terms of the proclamation tends

to suggest that the petitioner had fulfilled all its conditions, including the presentation of firearms and ammunition. His Honor's emphasis on the need of strict compliance with the Secretary of Justice's circular, taken in connection with his opinion, gives added ground for supposing that an arm and ammunition were turned in.

The provincial fiscal's insinuation that the gun was surrendered by another Hukbalahap has nothing to support it than his belief. Belief, suspicion and conjectures can not overcome the presumption of regularity and legality which attaches to the certificate in question. But granting the truth of the fiscal's statement, it nevertheless may be that the petitioner, who was an officer in the Hukbalahap organization, was the true and real owner of the weapon and not the man who previously surrendered it.

This is not saying that surrender of firearms was a necessary requirement to stay the effects of the proclamation. It is not necessary to decide this question, and we do not attempt to do so.

Some members of the Court question the applicability of Amnesty Proclamation No. 76 to Hukbalahaps already undergoing sentence upon the date of its promulgation. The Secretary of Justice's implementing circulars are predicated on the assumption that the proclamation is all-inclusive. As a contemporary construction, this opinion of the Secretary of Justice ought to carry much weight, considering that, as the department head who advised the Chief Executive and in whose department the proclamation was drawn, he is in a position to be informed of its scope and meaning.

Quite apart from this consideration, the majority of the Court believe that by its context and pervading spirit the proclamation extends to all members of the Hukbalahap and PKM organizations. It makes no exception when it announces that the amnesty is proclaimed "in favor of the leaders and members of the associations known as Hukbalahap and Pambansang Kaisahan ñg Magbubukid." No compelling reason is apparent for excluding Hukbalahaps of any class or condition from its object, which is "to forgive, and forego the prosecution of the crimes of rebellion, sedition, etc.," as a "just and wise measure of the Government." We are to suppose that the President and the Congress, knowing that a good number of Hukbalahap and PKM affiliates had been or were being prosecuted, would have, in clear terms, left them out of that had been the intention, instead of leavign their exclusion to inference.

As a matter of fact, we can discover neither advantage nor desirableness that could have induced the President and the Congress to adopt a policy of condoning the offense of Hukbalahaps who persisted in their defiance of the Government and not the crime of those who had already tasted

the bitter pill of retribution for their transgression. That runs counter to the spirit of generosity and magnanimity which inspired Proclamation No. 76. It is not keeping with the proclamation's concept that forgiveness is more expedient for the Government and the public welfare than punishment. If total punishment is foregone in favor of Hukbalahaps who succeeded in evading arrest, it stands to reason that those who fell into the clutches of the law have better claim to clemency for the remaining portion of a punishment fixed for the same offense.

The avowed practical objective of the amnesty is to secure pledge of loyalty and obedience to the constituted authorities and encourage resumption of lawful pursuits and occupation. This objective can not be expected to meet with full success without the goodwill and coöperation of the Hukbalahaps who have become more embittered by their capture, prosecution and incarceration. It was known that those dissidents who had been arrested and prosecuted were not going to remain in jail forever, and that discrimination against them might in itself be a driving force for them and their sympathizers to take up arm again.

We pursue the above line of reasoning as a means of determining the grantor's intention, not as a means of enlarging the proclamation's meaning. We test an interpretation by its results.

Fundamentally and in their utmost effect, pardon and amnesty are synonymous. Mr. Justice Field in Knote *vs.* United States, 24 Law. ed., 442, 443, said that "the distinction between them is one rather of philological interest than of legal importance." It seems to be generally conceded in the United States that the word " ' pardon' includes amnesty." (State *vs.* Eby, 71 S. W., 61.) This being so, the rules for interpreting pardon and amnesty ought not to vary. Now then, according to a well-recognized doctrine, pardon is construed "most strictly against the state." "Where general words are used, their natural meaning is not to be restricted by other words unless the intention to do so is clear and manifest." (46 C. J., 1192.)

At best, the contention that the grace and beneficence of the amnesty are denied the Hukbalahaps who were in prison rests on the idea that being restrained of liberty they can not surrender. Our answer is that surrender is required merely as a token of willingness to abide by the conditions of the grant. It is not intended as, and can not accomplish the purpose of, a security. As evidence of good faith, surrender by Hukbalahaps from the field is not more effective than a prisoner's written and more solemn manifestation of his acceptance. If physical presence be deemed essential, prisoners not only present themselves but are under the custody of the authorities subject to their absolute control until released.

The writ will be granted and the petitioner discharged from confinement immediately without costs. It is so ordered.

Moran, C. J., Parás, Pablo, Perfecto, and *Briones, JJ.,* concur.

Feria, Bengzon, and *Montemayor, JJ.,* concur in the result.

Writ granted.

[No. L–1959. Diciembre 13, 1948]

EL PUEBLO DE FILIPPINAS, querellante y apelado, *contra* FERNANDO GONZALES Y SOL, querellado y apelante

1. DERECHO PENAL; POSESIÓN ILEGAL DE ARMAS; DECLARACIÓN DE CULPABILIDAD; CIRCUNSTANCIA ATENUANTE; NO CABE INVOCAR EN LEYES ESPECIALES.—Con respecto a infracciones castigadas por leyes especiales, no cabe invocar ni tener en cuenta como atenuante la declaración de culpabilidad bajo la disposición citada del Código Penal. (Artículo 10, Código Penal Revisado; Pueblo *contra* Noble, R. G. No. L–289, cuya sentencia se promulgó el 29 de Agosto, 1946.)

Per PERFECTO, *J.,* dissenting:

2. SPECIAL LAWS.—The special laws mentioned in article 10 of the Revised Penal Code refer to all penal laws other than the said code.
3. TWO CLAUSES.—Article 10 of the Revised Penal Code is composed of two clauses, but the main purpose of said article is embodied in the second clause as the first one is a superfluity.
4. THE REVISED PENAL CODE SUPPLEMENTARY TO SPECIAL LAWS.—Unless the special penal laws should specially provide the contrary, under the Revised Penal Code, the latter is supplementary to the former, and among the code provisions that are supplementary by their nature are that of articles 2, 3, 4, 5, 8, 11, 12, 13, 14, and 15 of the Revised Penal Code.
5. GENERAL PRACTICE IN TRIAL COURTS.—Following the provision in the second clause of article 10 of the Revised Penal Code, it is the general practice in trial courts to consider voluntary surrender and plea of guilty as mitigating circumstances in special penal laws.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Peña, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Ignacio B. Alcuaz en representación del apelante.

El Procurador General Auxiliar Sr. Ruperto Kapunán, Jr., y el *Procurador Sr. José G. Bautista* en representación del Gobierno.

BRIONES, *M.:*

Ante el Juzgado de Primera Instancia de Manila se formalizó querella contra el acusado, Fernando Gonzales y Sol, por posesión de una pistola automática, calibre 45,

serie No. 429651, con algunas municiones. Al llamarse a vista la causa, el acusado, previo permiso del juzgado, retiró su anterior declaración de no culpable y, en su lugar, prestó otra confesándose culpable del delito querellado. En consecuencia el juzgado, apreciando como circunstancia atenuante la declaración de culpabilidad, condenó al acusado a sufrir una pena indeterminada de 1 año y 1 día a 3 años de prisión, y a pagar las costas, amen de la confiscación de los objetos que constituían el *corpus delicti* y se hallaban en poder de la policía. De la sentencia así dictada el acusado ha interpuesto la presente apelación.

El apelante no suscita más que una cuestión, a saber: que, habiéndose el mismo declarado culpable, la pena debiera ser la mínima de 1 año y 1 día de prisión, en vez de la indeterminada de 1 año y 1 día a 3 años impuesta por el juzgado.

La pretensión del apelante carece de fundamento. La pena impuesta se halla ajustada a la ley que señala para el delito querellado y enjuiciado una pena no menor de 1 año y 1 día de prisión ni mayor de 5 años, o dicha pena de prisión y una multa de no menos de ₱1,000 ni más de ₱5,000, a discreción del tribunal. (Artículo 2692 del Código Administrativo Revisado, tal como ha sido enmendado por la Ley de la República No. 4). Es evidente que la pena impuesta se halla perfectamente dentro del marco de la ley.

Se arguye que, en virtud de la declaración de culpabilidad, el acusado "merece una pena menor que la impuesta," a tenor del artículo 13, inciso 7 del Código Penal Revisado. Pretensión errónea. Con respecto a infracciones castigadas por leyes especiales, no cabe invocar ni tener en cuenta como atenuante la declaración de culpabilidad bajo la disposición citada del Código Penal. (Artículo 10, Código Penal Revisado; Pueblo *contra* Noble, R. G. No. L–289, cuya sentencia se promulgó el 29 de Agosto, 1946.)

De todas maneras, se advierte que en la presente causa el juez sentenciador tuvo en cuenta como atenuante la declaración de culpabilidad y, en consecuencia, condenó al acusado al mínimum de la pena señalada por la ley.

En méritos de lo expuesto, se confirma la sentencia apelada, con las costas a cargo del apelante. Así se ordena.

Moran, Pres., Parás, Feria, Pablo, Bengzon, Tuason, y *Montemayor, MM.,* están conformes.

PERFECTO, *J.*, dissenting:

We cannot agree with the theory that the plea of guilty as a mitigating circumstance under the Revised Penal Code (article 3, paragraph 7) cannot be considered in offenses punishable under special laws, meaning, all penal laws other than the Revised Penal Code.

Appellant having pleaded guilty prays that the indeterminate penalty of one year and one day to three years of imprisonment imposed by the trial court should be reduced to the fixed penalty of one year and one day, the minimum allowed by Commonwealth Act No. 56, as amended by Republic Act No. 4, punishing illegal possession of firearms.

The pronouncement made in People *vs.* Noble, L–289, upon further consideration, appears to be wrong and must be reversed. The pronouncement was based on an incomplete understanding of the provisions of article 10 of the Revised Penal Code.

Said article provides:

"ART. 10. *Offenses not subject to the provisions of this Code.*— Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

It can be seen that the article is composed of two clauses. In the first it is provided that offenses under special laws are not subject to the provisions of the Code. The second makes the code supplementary to such laws.

Apparently, the two clauses are contradictory, but a sensible interpretation will show that they can perfectly be reconciled. The first clause should be understood to mean only that the Penal Code is not intended to supersede special penal laws. The latter are controlling with regard to offenses therein specifically punished. Said clause only restates the elemental rule of statutory construction that special legal provisions prevail over general ones. As a matter of fact, the clause can be considered as a superfluity, and could have been eliminated altogether.

The second clause contains the soul of the article. The main idea and purpose of the article is embodied in the provision that the "code shall be supplementary" to special laws, unless the latter should specifically provide the contrary.

Under this clause, which inadvertently has not been considered in the laconic decision in the Noble case, in the absence of contrary provision in the special laws, these shall be supplemented by the general provisions in the Revised Penal Code that, by their nature, are applicable. Among them are articles 2, 3, 4, 5, 8, 11, 12, 13, 14 and 15.

The provisions in the above-mentioned articles of the Penal Code have been enacted in consonance with the conviction among the most enlightened penologists that they are necessary to render substantial justice in criminal cases.

If the modifying circumstances provided in the Revised Penal Code could not be considered in the trial of offenses punished under special penal laws, what standard shall the

courts consider in order to determine if the accused should be punished with lighter, moderate or heavier penalty within the range provided by law? Without considering such modifying circumstances, the determination of which is the result of deep legal thought and centuries of experience in the administration of criminal laws, the only standard that can be taken into consideration as to the more or less severe penalty to be imposed will be the discretion of the court. That might open the door to discrimination and unjust results, as the discretion of each judge will be differently exercised from that of the others.

The general practice in trial courts has been to consistently consider voluntary surrender and voluntary plea of guilty as mitigating circumstances. Even in this case, as stated in the prosecution's brief, the lower court considered the plea of guilty as a mitigating circumstance, although it failed to grant appellant all the benefits of it. Undoubtedly, the practice is intended to make effective the provision of article 10 of the Revised Penal Code to the effect that the same is supplementary to special penal laws.

Appellant is undoubtedly entitled to the benefits of the mitigating circumstance for his voluntary plea of guilty and, accordingly, the appealed decision should be modified as prayed for in appellant's brief.

Se confirma la sentencia.

[No. L–1333. December 14, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VALENTIN HERNANA ET AL., defendants. TOMAS SASING, appellant.

1. CRIMINAL LAW; ROBBERY IN BAND WITH MURDER; INCREDIBLE EVIDENCE FOR THE PROSECUTION IS INSUFFICIENT FOR CONVICTION.—G. Y., who was as unpredictable as the changeable weather, certainly does not deserve credence. The explanation that he refused to incriminate the accused in view of the latter's threats, cannot readily be accepted, since the same moral weakness that may be implied from the fact that Y is easily victimized by threats may be invoked in support of the probability that he testified in accordance with his confession because he was maltreated and threatened by the military police; and Y's lack of credibility undoubtedly accounted for the acquittal of all the other co-accused.
2. ID.; ID.; VOICE OF ACCUSED AS EVIDENCE OF IDENTITY.—It is true that one's identity may be established by or gathered from his voice, if familiar to the witness. But where, as in this case, the witness failed to state that the appellant had uttered any specific statement during the commission of the alleged offense which enabled her to recognize his voice, we cannot, without entertaining some doubt, hold the appellant responsible for so grave a crime as that charged in the information. While the widow testified that she heard orders coming from the outside, this of course does not mean that she heard said orders as having been given or uttered by the appellant.

APPEAL from a judgment of the Court of First Instance of Cebu. Piccio, J.

The facts are stated in the opinion of the court.

Ramon T. Oben for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Florencio Villamor* for appellee.

PARÁS, *J.:*

Tomas Sasing, Guillermo Alcordo and Gervasio Ygot, with seven others, were accused in the Court of First Instance of Cebu with the offense of robbery in band with murder. At the instance of the prosecution, the trial court dismissed the case as against Gervasio Ygot in order to enable the prosecution to use him as a witness. After trial, the lower court convicted Tomas Sasing and Guillermo Alcordo of the complex crime of robbery with murder, aggravated by the circumstances of night time and armed band, and sentenced them to *reclusión perpetua* and its accessories, to indemnify the heirs of the deceased in the sum of ₱2,000, and to pay the costs. All the other accused were acquitted. Only Tomas Sasing has appealed to this Court.

The evidence for the prosecution in substance tends to show that at about nine o'clock in the evening of July 3, 1946, Inocentes Hermosilla and his wife Macaria Capuyan heard voices emanating from outside their isolated house in barrio Capotolan, municipality of Danao, Province of Cebu, demanding that the door be opened to the "harianon" (ruler). Hermosilla did not comply with the persistent demands of the visitors, saying that he was tired. Someone from the outside asked whether Hermosilla was going to resist, whereupon the latter went to the kitchen to fetch his wife. As they were entering the door leading to the hall, several shots were fired from the outside. Hermosilla, who was hit on several parts of his body, instantly died. The malefactors cut the rope which fastened the door, after which Tomas Sasing, Guillermo Alcordo and an unindentified companion, all armed with pistols, entered the house while the others remained below. Tomas Sasing and his two companions then took from the family trunk clothing worth ₱100, ₱235 in cash and ₱18 worth of jewelries, aside from three fighting cocks which the marauders carried away.

One of the two principal witnesses for the prosecution is Gervasio Ygot, appellant's co-accused who was excluded from the case at the instance of the fiscal for the very purpose of becoming a state witness. This witness, in the first part of his testimony, disclaimed any knowledge of the facts alleged in the information. Upon being reminded by the fiscal of his extrajudicial confession (Exhibits F and F–1), however, Ygot began to relate the

recitals in his confession incriminating the appellant and all the other accused. Upon cross-examination, Ygot reverted to his first statement that he did not know anything about the crime. After conferring with Ygot, the fiscal announced to the court that this witness was ready to tell the whole truth, whereupon the latter, allowed to take the witness stand again, testified in accordance with his confession.

The other principal witness for the prosecution is the wife of Hermosilla who testified that although she did not actually see the persons who entered her house on the occasion in question, she recognized the appellant as being one of them because of his voice.

We are unable to find the appellant guilty upon such kind of evidence. Gervasio Ygot, who was as unpredictable as the changeable weather, certainly does not deserve credence. The explanation that he refused to incriminate the accused in view of the latter's threats, cannot readily be accepted, since the same moral weakness that may be implied from the fact that Ygot is easily victimized by threats may be invoked in support of the probability that he testified in accordance with his confession because he was maltreated and threatened by the military police; and Ygot's lack of credibility undoubtedly accounted for the acquittal of all the other co-accused.

The testimony of the widow of Hermosilla might perhaps have served as corroborating evidence, if the same is not free from criticism. It is true that one's identity may be established by or gathered from his voice, if familiar to the witness. But where, as in this case, the witness failed to state that the appellant had uttered any specific statement during the commission of the alleged offense which enabled her to recognize his voice, we cannot, without entertaining some doubt, hold the appellant responsible for so grave a crime as that charged in the information. While the widow testified that she heard orders coming from the outside, this of course does not mean that she heard said orders as having been given or uttered by the appellant.

The alleged discovery in the appellant's house of an empty magazine of a sub-machine gun does not strengthen the case for the prosecution, it appearing that, according to its own version, the appellant was armed with a pistol.

The appealed judgment will therefore be, as the same is hereby, reversed, and the appellant, Tomas Sasing, acquitted with costs *de oficio*. So ordered.

Moran, C. J., Feria, Perfecto, Bengzon, and *Briones, JJ.,* concur.

PABLO, *M.*, disidente:

Sólo dos, Tomás Sasing y Guillermo Alcordo, de los once que asaltaron la casa de Inocentes Hermosilla, fueron condenados porque los otros no fueron identificados y los otros dos no arrestados aun. Gervasio Ygot, uno de los acusados, previo sobreseimiento de la querella en cuanto a él, fué presentado como testigo de la acusación, y el juzgado *a quo* en cuanto a su declaración dijo lo siguiente:

"The accused Gervasio Ygot signed an affidavit incriminating his co-accused on July 17, 1946, so much so that in the hearing of this case before this Court on October 8, 1946, the fiscal, invoking rule 115, Rules of Court, prayed for the dismissal of the case against him—which was granted, and made him testify for the prosecution. He began by denying any knowledge on the occurrence; a recess was had and upon resuming the hearing he declared incriminating his co-accused substantially as follows: that moments before the occurrence they were on a bridge because Sasing told him to be there—where he met the two Heranas, Batalla and Alcordo; Sasing told him they were going to rob a house. Although at first he refused he had to go with them under their threats; that Sasing was carrying a revolver, Venancio Herana and Batalla rifles, and the rest hunting knives; that upon nearing the house he was left behind to watch, while Sasing, Alcordo and Venancio Herana went upstairs, later he heard shots, the rest remained under the house. Later he saw them coming from the house carrying things and heard them say some one died; that he did not get any share from the loot and went his way afterwards. He explained that he had been theatened with death if he revealed the truth. Upon his cross-examination, however, in the following session (October 11, 1946) he upsetted everything by again denying any knowledge of the occurrence. It may be stated in this connection that all the accused were detained prisoners and that from the provincial jail to the court-house (a distance of more than two kilometers) the prisoners with their guards have to walk.

"In the interim other witnesses for the prosecution MPC Sgt. Olegario Villarino and the justice of the peace of Danao had to take the witness stand and established the circumstances under which accused's extra-judicial confession Exhibit F was executed and acknowledged voluntarily. During an interval the Court was informed (this was during the session of October 14) that the accused Ygot wanted to testify again—which was granted. He declared that his conscience was bothering him; that in his cross-examination of October 11 he had to upset all he had testified to for the Government in his direct examination two days previous because Sasing had threatened other people outside the jail would kill him if he (Sasing) could not and that he used to threaten him every time there was a chance while they were in jail, but now knowing as he well knew that Sasing was the most responsible for all that happened he had to tell the truth: that Sasing was the terror in the mountains, and reiterated what he had testified to in his direct examination of October 8. The Court is aware of the circumstances surrounding the possibilities of contact between the accused in this case; has had full opportunities in observing the conduct of this witness and those of the other accused during the course of the hearings and thus impose itself with the predicament under which said witness had found himself. Between these changes in his testimony, and considering his affidavit Exhibit F, the Court

would chose what he had testified to in his direct examination of October 8 as the truth."

Y no dando crédito a la defensa de coartada, el juzgado *a quo* condenó a los dos acusados. Estas declaraciones contradictorias del testigo, teniendo en cuenta las amenazas de que fué objeto, no deben ser desatendidas indebidamente. Solamente declaraciones contradictorias no explicadas satisfactoriamente deben rechazarse.

Pero aun descartando la declaración del testigo Ygot, en mi opinión, hay prueba bastante para confirmar la sentencia impuesta *contra* Tomás Sasing. La viuda de Inocentes Hermosilla declaró en preguntas directas lo siguiente:

"P. ¿En la noche de autos dónde estaba Tomás Sasing?—R. Él subió a los altos de la casa.

"Juzgado. P. ¿Quiénes más subieron además de Sasing?—R. Guillermo.

"P. ¿Dónde está Guillermo?—R. Ese (indicando al acusado Guillermo Alcordo).

"P. ¿Y a quiénes más vió Vd. en aquella noche?—R. Eran tres los que subieron a los altos de la casa; yo no sé el nombre de uno de ellos." (Pág. t.n.t.)

"Sr. Velásquez (abogado de los otros acusados en repreguntas)

"P. How did you know Tomas Sasing?—R. During the guerrilla because he used to go to my house to ask sugar, chicken, rice and eggs.

"P. How about Guillermo Alcordo?—R. Just recently.

"P. How did you happen to know him?—R. Because he got married in that place of Caputututan," (Págs. 10–11, t.n.t.)

Sr. Clavano (Abogado de Tiburcio Mariquit, en repreguntas):

"P. Do you mean to say that the justice of the peace did not investigate you?—R. I was investigated when the remains of the deceased were still there.

"P. In that investigation made in Danao did you mention any specific person as responsible for the crime?—R. Yes, I testified before the justice of the peace of Danao that I identified Tomas Sasing and Guillermo Alcordo and I could not tell who was the other." (Pág. 12, t. n. t.)

"Sr. Clavano (En repreguntas):

"P. You mean to say that you did not see actually the face of Tomas Sasing but only the voice?—R. Yes, sir.

"P. I am asking you if you can testify whether Tomas Sasing was upstairs or not?—R. He went upstairs.

"Juzgado:

"P. Did you see his face?—R. I did not because my face was downward.

"P. The other accused Guillermo Alcordo, did you see him came up?—R. I also heard his voice because I know his voice already.

"Sr. Clavano (En repreguntas):

"P. You declared before that three men came up the house by forcing the door and cutting the rope, is that right?—R. Yes, sir.

"P. And you declared before that those three were Tomas Sasing, Guillermo Alcordo and other whom you did not recognize, did I get you?—R. Yes sir." (Págs. 13–14, t. n. t.)

"Juzgado:

"P. You had no occasion to look at those three persons?—R. Because my face was downward due to my fear. I could only recognize them due to their voice.

"P. None of those three approached you?—R. No." (Pág. 14, t.n.t.)

"Sr. Fiscal (en redirectas):

"P. You said that you are familiar with the voice of Tomas Sasing, how long have you known Tomas Sasing up to the night of incident?—R. Long time ago, since the Japanese invasion because they used to rest in my house because Tomas Sasing and my husband were good friends.

"P. You said that Tomas Sasing took rest in your house, is he not connected with any organization or group of men?—R. For the army." (Pág. 15, t. n. t.)

De esta declaración de la testigo Macaria Capuyan, viuda del occiso, se desprende que tenía sobrados motivos para conocer la voz de Tomás Sasing y Guillermo Alcordo. No inspira la menor duda su declaración que es positiva, clara y sencilla. Hubiera podido declarar,—si su intención fué sólo obtener la condena de los acusados y no para decir la verdad—que vió la cara de los acusados porque, después de todo, éstos tenían una lámpara cuando robaban el contenido del baúl y se apoderaban de los otros efectos de la casa. Si no mintió cuando tenía oportunidad de hacerlo, ello demuestra su veracidad, la honradez en sus propósitos. Con toda sinceridad dijo que estaba boca abajo cerca del montón de maíz, y por miedo no quiso levantar la cabeza. Bajo aquellas circunstancias y después del tiroteo en que su marido cayó muerto, era una imprudencia hacer algún movimiento. Los malhechores podían haber matado a ella a mansalva, al menor movimiento. La declaración solamente de esta testigo, en mi opinión, es suficiente para llegar al convencimiento íntimo de que el acusado Tomás Sasing era uno de los malhechores asaltantes. Cuando Guillermo Alcordo se allanó a sufrir la condena y no apeló es que está convencido de su culpabilidad. No es el número de testigos el que determina la fuerza probatoria de un hecho sino la confianza, el convencimiento que inspira en el ánimo, teniendo en cuenta las circunstancias bajo las cuales un testigo tuvo conocimiento de él. El oido es un sentido que transmite la sensación de una manera fiel, y merece tanta confianza como el ojo si no hay motivos anormales que impidan su libre percepción. Como la casa era pequeña no era difícil para la testigo oir la conversación que han tenido los ladrones durante la búsqueda de su presa. No es necesario que la testigo repita en la vista las palabras

pronunciadas por Sasing. Si al tiempo en que oyó la voz de Sasing durante el saqueo llegó al convencimiento de que era Sasing quien hablaba, esa impresión transmitida al juzgado bajo juramento, es suficiente prueba en que fundar una condena, tanto más cuanto que toda su atención estaba concentrada en la percepción de su oido. En delitos cometidos, como en el caso presente en que no había más que dos moradores de la casa, no deben exigirse muchos testigos que sería pedir un imposible. No es necesario que alguien corrobore el testimonio de ella. Del matrimonio, el marido falleció. Cómo podemos exigir que alguien corrobore el testimonio de la viuda que es la única superviviente, sin inventar o fabricar un testigo?

"Al parecer, el abogado de la defensa es de opinión que, según la doctrina sentada por esta Corte en las causas de los Estados Unidos contra Cabe (1 Jur. Fil., 273) y Los Estados Unidos contra Asiao (1 Jur. Fil., 313), la declaración no corroborada de un testigo en cuanto a la identidad de un acusado no es suficiente para fundar en ella una condena. En el primer caso antes citado la Corte dijo en la página 274:

" 'La singularidad del testimonio no impide un juicio acabado acerca de la realidad del hecho y de la culpabilidad de los delincuentes, porque además del testigo existen indicios graves y concluyentes basados en hechos ciertos y probados, como son las detenciones del occiso y de los testigos Daniel Gascón y Sotero Alquero * * *.'

"Y en la segunda causa la Corte enunció esta doctrina (tomada del syllabus);

" 'La presunción de inocencia es bastante para impedir que se condene al acusado en virtud de la identificación no corroborada de un solo testigo cuyas declaraciones son desacreditadas por las circunstancias o por contradicciones.'

" En ninguno de estos casos ha dicho la Corte que la declaración no corroborada de un testigo fidedigno no es suficiente para fundar en ella una condena. El testimonio de un testigo es suficiente para este objeto siempre que convenza al Tribunal, fuera de toda duda racional, de que el acusado fué el autor del delito que se le imputa." (E. U. contra Mondejar, 19 Jur. Fil., 169.)

"A más de lo expuesto, sólo es necesario hacer mención de que la declaración de un testigo es suficiente para apoyar una sentencia condenatoria, si dicha declaración es convincente fuera de duda racional. En el presente caso, la declaración del denunciante es positiva, clara y exenta de contradicciones. (E. U. *contra* Dacotan [1903], 1 Jur. Fil., 697; E. U. *contra* Mondejar [1911], 19 Jur. Fil., 169.) (Estados Unidos *contra* Olais, 36 Jur. Fil., 882.)

Voto por que se confirme la sentencia apelada.

TUASON, *J.:*

I concur.

MONTEMAYOR, *J.:*

I concur in the foregoing dissenting opinion of Mr. Justice Pablo.

Judgment reversed, appellant acquitted.

[No. L–1727. December 14, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MAXIMINO HOFILEÑA (*alias* MANING) and NICOLAS MUYCO (*alias* COLASING), defendants and appellants.

1. CRIMINAL LAW; MURDER; EVIDENCE; PROOFS ESTABLISHED BY PROSECUTION CONCLUSIVELY SHOW THE GUILT OF ACCUSED.—The evidence on record is, however, conclusive that the killing took place as narrated by the witnesses for the prosecution. The testimonies of P. G., the eyewitness to the killing, appears to be strongly corroborated by the testimonies of Father M. T. and Lts. P. T. and E. E. The last two are Bataan veterans who were also captured by the guerrillas and confined in the cave like A.
2. ID.; ID.; ID.; ADMISSION AND AVOIDANCE BY WITNESSES FOR THE DEFENSE.—The conduct of appellants themselves appears to support the prosecution's theory. H and M, as testified to by witnesses and supported by documentary evidence on record, made admissions of their respective direct participations in the killing, only making frantic efforts, M to have the case dismissed against him so that he might be used as prosecution witness against H, and H to be freed from the information to be used as prosecution witness against Major I, his commanding officer in the concentration camp.
3. ID.; ID.; ID.; HEARSAY EVIDENCE INTRODUCED BY THE DEFENSE HAVE NO WEIGHT; UNEXPLAINED INCONSISTENT TESTIMONIES, EFFECT OF.—Although several witnesses were called by the defense to show that D was the one who shot A, nobody alleged having seen the shooting and all their testimonies are based on the exclusive information given by M. D., who happened to be already dead at the time of the trial and, therefore, unable to confirm or belie the defense witnesses. The defense had tried to show that an investigation had been made of the killing, but the testimonies of the witnesses on the matter are highly unconvincing. All relied on the alleged information given by D himself. Not a single person took pain to verify the information or even to have a look at the place where A was shot by D and to find out whether A was actually killed. On the other side, H has not explained his contradictory statement to the effect that, at first, he said that he heard a shot about twenty minutes after D and A left for the forest, and later he said that he did not hear any shot.

APPEAL from a judgment of the Court of the First Instance of Iloilo. Makalintal, J.

The facts are stated in the opinion of the court.

Conrado P. Angeles for appellants.

Solicitor General Felix Bautista Angelo and *Solicitor Ramon L. Avanceña* for appellee.

PERFECTO, *J.:*

Jesus Fernando Akol fought in Bataan. After the surrender of the Fil-American forces, he took part in the death march to Capas, where he was concentrated. Months afterward he was released and he sailed for Occidental Negros, his home province. In Panay he was

intercepted by the guerrillas and they held him prisoner. On February 4, 1943, he was being confined with other sixty or seventy prisoners in the guerrilla concentration camp in the wooded hills of Ibahay, municipality of Passi, Iloilo, under the charge of warden Maximino Hofileña.

The previous day Hofileña instructed Nicolas Muyco, guard of the cave used as concentration camp, to keep good watch of Akol, who was scheduled for the next day. The reticent ambiguity of the instruction was part of the cryptic language used in the place which the concentrated people understood, on the basis of past experience, to mean that Akol was up for execution.

That day, with a clear premonition of his fate, Akol gave his confession to Miguel Tadifa, a Roman Catholic priest who was among those who served in the Fil-American forces and held prisoners in Ibahay. Akol requested Father Tadifa to reveal his fate only to his father, but not to his mother. After the confession, Father Tadifa and Akol remained a good part of that night talking of many things about their respective experiences.

On February 4, 1943, Akol was summoned to the warden's office where Hofileña told him to pack his things as he was to be released. At about four o'clock in the afternoon of the same day, Nicolas Muyco took Akol from the cave with tied hands, and brought him to a wooded spot. When Muyco was about to blindfold him, Akol refused to be blindfolded, but requested for permission to pray, because he knew he was going to be killed. The request was granted. Akol knelt down and prayed for about three minutes, after which, Muyco shot him on the back with a rifle. With drawn revolver in his hand, Hofileña appeared after the shot and made a remark that "it seems he is still alive." Upon his order, the dead body of Akol was dumped into a foxhole which had been previously dug. The next day Akol's shoes were seen by Father Tadifa in the possession of Hofileña.

There is no controversy between prosecution and defense as to the killing of Akol on February 4, 1943. Appellants disclaim, however, any responsibility for the killing, alleging that it was Manuel Dequito who brought Akol to the forest to gather firewoods and that while Dequito was fulfilling a physiological necessity, Akol attempted to escape, and Dequito shot him.

The evidence on record is, however, conclusive that the killing took place as narrated by the witnesses for the prosecution. The testimony of Pablo Grecia, the eyewitness to the killing, appears to be strongly corroborated by the testimonies of Father Miguel Tadifa and Lts. Perfecto Tugle and Eduardo Exaltado. The last two are Bataan veterans who were also captured by the guerrillas and confined in the cave like Akol.

The conduct of appellants themselves appears to support the prosecution's theory. Hofileña and Muyco, as testified to by witnesses and supported by documentary evidence on record, made admissions of their respective direct participations in the killing, only making frantic efforts, Muyco to have the case dismissed against him so that he might be used as prosecution witness against Hofileña, and Hofileña to be freed from the information to be used as prosecution witness against Major Imperial his commanding officer in the concentration camp.

Although several witnesses were called by the defense to show that Dequito was the one who shot Akol, nobody alleged having seen the shooting and all their testimonies are based on the exclusive information given by Manuel Dequito, who happened to be already dead at the time of the trial and, therefore, unable to confirm or belie the defense witnesses. The defense had tried to show that an investigation had been made of the killing, but the testimonies of the witnesses on the matter are highly unconvincing. All relied on the alleged information given by Dequito himself. Not a single person took pain to verify the information or even to have a look at the place where Akol was shot by Dequito and to find out whether Akol was actually killed. On the other side, Hofileña has not explained his contradictory statement to the effect that, at first, he said that he heard a shot about twenty minutes after Dequito and Akol left for the forest, and later he said that he did not hear any shot.

Appellants are guilty of murder beyond all reasonable doubt. The prosecution recommends that the indemnity fixed by the trial court be increased to ₱6,000, in accordance with the doctrine laid down in People *vs.* Amansec, L–927, 45 Off. Gaz. [Supp. to No. 9], 51. The recommendation is well taken. Therefore, affirming the appealed decision, as thus modified, appellants are sentenced to *reclusión perpetua* and the accessories of the law, and to indemnify jointly and severally the heirs of Akol in the sum of ₱6,000, plus the costs.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L–1774. December 14, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CLAUDIO ORDONIO, defendant and appellant

1. CRIMINAL LAW; MURDER; WITNESSES; DISCREPANCIES OF TESTIMONIES IN MINOR DETAILS, EFFECT OF.—The testimonies of F. G. and M. U., testifying for the prosecution, have proved conclusively that the prosecution's version is the true one. The insignificant errors or discrepancies on minor details in their

testimonies do not affect their truthfulness. As in this case, such errors and discrepancies, honestly committed, rather show sincerity. They are natural concomitants to human limitations. As the sun, although appearing to us as the greatest miracle in the universe, is not spotless, human beings cannot absolutely be free from faults. This is true even with the choicest paragons of the human species.

2. ID.; ID.; ID.; INCREDIBLE TESTIMONY OF AN ACCUSED CANNOT OVERCOME THE VERACITY OF CORROBORATED TESTIMONIES OF PROSECUTING WITNESSES.—The truth of the testimonies of the witnesses for the prosecution, supported by the unbiased testimony of the chief of police of Lupao, B. A., to whom the accused said that he killed the two brothers because they would not comply with his orders, is corroborated by a witness for the defense, J. Z., who went to the scene immediately after hearing the shots and to whom the accused said that he killed the two brothers because they tried to fight him, and that the accused did not tell him that the deceased pointed their guns at him. According to his testimony, it is not credible that the deceased could have aimed their guns at the accused because R. L.'s carbine was unloaded, so much so that the magazines were taken from his pockets, and, while A. L.'s carbine had a magazine, the gun was locked and could not be fired without being unlocked first.

3. ID.; ID.; ID.; WEIGHT OF EVIDENCE; UNCORROBORATED TESTIMONY OF AN ACCUSED AGAINST OVERWHELMING EVIDENCE OF PROSECUTION.—Against the overwhelming evidence of the prosecution, supported by J. Z., a witness for the defense, there is only the wholly uncorroborated testimony of the accused which, on the other side, has not given any reasonable motive why the deceased brothers would have wanted to aim their guns at him.

4. ID.; ID.; COMPLEX CRIME, HOW COMMITTED.—A complex crime is committed when two persons are killed as a result of the same murderous act of the accused. When each one of the two deceased was killed by different and separate sets of shots, fired, respectively, through two independent sets of acts of the accused, each one aimed exclusively at a victim, for each victim killed there is a separate and independent crime of murder.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Nable, J.

The facts are stated in the opinion of the court.

Vicente Llanes for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Felix V. Makasiar* for appellee.

PERFECTO, *J.:*

The witnesses for the prosecution testified in substance as follows:

1. Pedro M. Villarosa, 34, married, physician, testified that Exhibits A and B are the medical certificates he issued on October 7, 1947, upon the post-mortem examination he made of the bodies of Rufo and Antonio Lajera. (4–5). He found post-mortem rigidity and three gunshot wounds in the body of Rufo Lajera. In the body of Antonio Lajera he found post-morten rigidity and

two gunshot wounds. The death of the two persons was due to shock and great hemorrhage. (7).

2. Pastor C. Domingo, 32, married, mayor of Lupao, testified that coming from San Fernando, La Union, he arrived at about 10 o'clock in the evening of October 6, 1946, and it was reported to him that, according to his investigation, a shooting took place at 11 o'clock on said date during which the two Lajera brothers were shot by Claudio Ordonio. (12). Exhibit C is an affidavit signed by Claudio Ordonio on October 7, 1946. (14).

3. Feliciano Ganal, 21, single, farm laborer, testified that between 10 and 11 in the morning of October 6, 1946, he was in the guardhouse in barrio San Roque, Lupao, with Claudio Ordonio, Rufo and Antonio Lajera and Manuel Umala. (18). Claudio Ordonio shot Rufo and Antonio Lajera. (19). The witness was about three meters distant. Claudio used a carbine. Antonio Lajera had a firearm but its magazine was before the shooting removed by Claudio. Rufo had no firearm. Antonio Lajera was leaning against the wall at the time he was shot and Rufo was standing with his two arms closed. Claudio, who came from a volleyball game, became angry because Rufo Lajera was asking him leave to go to town. (21). He disarmed Rufo Lajera. The arm was given by Claudio to the witness, taking first all the bullets from the firearm. Later the witness delivered the firearm to Rufo. (22). Claudio was the sergeant. He did not grant permission to Rufo to go to town. Antonio and Rufo Lajera were special policemen. (23). Antonio was first shot and later Rufo. Both fell. (24). Claudio was already angry when he arrived. He was hitting his forearm against the bamboo bed. (27). Then Claudio and Rufo Lajera quarrelled. (28). Claudio was angry because Rufo Lajera was asking permission to go to the poblacion. (29). Exhibit 1 is an affidavit the witness signed before the mayor of Lupao. (30). After the carbine was taken by Claudio from Rufo Lajera the latter said he did not mind being disarmed and being shot provided it be in the presence of his officers. Later Claudio ordered the witness and Manuel Umada to accompany Rufo Lajera to the town. (36). At that time Antonio Lajera intervened and wanted to follow his brother to town saying that it was because his brother was going to be disarmed and he did not know what they were going to do with him on the way, as he was to be escorted. Upon hearing it, Claudio said, "what do you mean now, you son of a bitch," and immediately he shot him. (37). Rufo recovered his gun from the witness when the latter was putting on his shoes. (41). Antonio Lajera was shot at about 11 o'clock. (44). Antonio Lajera was the first one who died. (45) From the time Rufo was able

to recover his arm to the time Antonio Lajera was shot, the witness was busy putting on his shoes. At that time he did not know what Rufo Lajera was doing. (47). After the shooting, Claudio was disarmed and he did not do anything more. The witness returned immediately to town to report to their officer. (50). When Antonio Lajera was shot, he had his firearm on his shoulder and his arms were crossed. At the time the witness was tying his shoes and he raised his head when he heard a shot. (52). When Antonio Lajera was shot, the witness did not see Claudio pointing the gun, but he heard the whistle of the bullet and when he looked up he saw Antonio falling down. (53). At the time Antonio was shot by Claudio, Rufo was facing them. (56–57).

4. Manuel Umala, 26, single, farm laborer, testified that he was in their guardhouse in San Roque, Lupao, on October 6, 1943. (59). At that time he saw Claudio Ordonio shoot Rufo and Antonio Lajera with a carbine. Antonio was first shot. He was sitting and leaning against the wall. The witness was more than a meter away from him. (60). When Rufo Lajera was shot, he was standing with his arms folded. At the time Feliciano Ganal was sitting on a bamboo bed. (61). He helped the witness snatch the firearm from Claudio Ordonio. After Feliciano Ganal was able to snatch the gun, he delivered it to the witness and went to town to report the matter. Claudio shot Rufo Lajera because the latter told him that he wanted to go to town to stay there and Claudio did not allow him. (62) Claudio took the gun of Rufo Lajera, took the magazine out, and gave it to the witness. Claudio told Rufo that he cannot go to town but later he told the witness to be ready to accompany Rufo to town. (63). When Antonio Lajera said that he was to go with his brother, Claudio replied, "What do you mean by that," and immediately shot him. (64). Rufo Lajera was to go to town accompanied by the witness Feliciano Ganal, and Claudio. Upon hearing about it, Antonio Lajera approached Claudio and said, "In that case, I want to go with them, because I do not know what you are going to do with my brother on the way." (73). At the time Antonio was shot, Rufo was sitting on the bamboo shed near the wall. He was not holding his carbine. It was placed on his lap. At the time those on guard duty were the witness and Feliciano Ganal. Both were holding their respective carbines. (76). At the time Rufo Lajera was shot, he had his gun slung on his shoulder, but without the magazine. (78). Rufo Lajera did not see the shooting of his brother because he had his back towards Claudio. (80). When the witness heard the shot, he got up and at that time he saw Antonio falling down. (85).

5. Bruno Arimbuyutan, 44, married, chief of police of Lupao, testified that he investigated the killing of Antonio

and Rufo Lajera by Claudio Ordonio and he immediately filed a complaint against the latter for double murder. (92–93). He learned about it from Manuel Umala and Feliciano Ganal and from Claudio Ordonio himself. The latter said that "he killed the two brothers because they were in the act of not complying with his orders as Sergeant in that guardhouse." This was told by Claudio Ordonio on October 6. (94). The witness went to the place at the time at about 11 o'clock. He found the dead bodies of the Lajera brothers. (95). The witness did not put in writing Claudio's statement. (96). Exhibit C is a statement of the accused taken by the sergeant of police.

The witnesses for the defense testified in substance as follows:

1. Cristobal Lapeña, 26, married, clerk, office of the municipal treasurer of Lupao, testified that on August 8, 1946, he was the executive officer of the civilian guards cantonment area in Lupao, under the control of the MPC. (114). Exhibit 4 was signed by the witness. Rufo and Antonio Lajera were privates in the organization. The sergeant was Claudio Ordonio. (115–116). The cantonment was located near and just north of the municipal building of Lupao. Claudio was the platoon sergeant. (120). On October 6, 1946, the witness was in his house in the cantonment. At about 8 o'clock he went, together with officers and soldiers, to barrio San Roque for inspection. The inspection took place from 8 to 9 o'clock. Claudio Ordonio, Manuel Umala, Feliciano Ganal, Prudencio Arendela, Francisco Sapla, and the members of the guards were present in the guardhouse. Antonio and Rufo Lajera were also present in the guardhouse. After the inspection, the commanding officer went to see the volleyball game in the barrio and the witness went back to his office in the town. (121–123).

2. Juan Zarate, 47, married, policeman of Lupao, testified that on October 6, 1946, he was a sergeant in the cantonment homeguards in Lupao. He was then in barrio San Roque. (124). That day Claudio Ordonio shot somebody "but I did not see him. I was on the other side of the road. I heard only the shots. I went immediately to the scene to see and help the people there. I saw the two persons dead. Rufo Lajera and Antonio Lajera." (125). Claudio Ordonio "was grappling with Manuel Umala. I helped in wresting the arm from Claudio Ordonio." The witness asked Claudio why his two companions were dead, and he replied, "He told me sir, that he shot them because they tried to fight him." The accused did not tell him how the deceased tried to fight him. (127). The witness collected the arms of the two deceased. He brought them to the poblacion, but took out the magazine first. The witness collected three carbines. Only

the one belonging to Antonio Lajera was loaded with magazine. Claudio's carbine had a magazine. He took the magazines of the deceased from their pockets. (128). Only the carbine of Antonio Lajera was loaded with magazine. He took magazines from the pants of Rufo and Antonio Lajera. (129). Claudio Ordonio did not tell him that "the two brothers pointed their guns at him, but they told me that they tried to fight him." (133). When he approached the accused and asked him what he did, the accused told me, "I shot them, sergeant, because they like to fight me." Rufo and Antonio Lajera had their respective magazines but not attached to their carbines. (134). Although there was magazine in the carbine of Antonio Lajera, the arm was safe-lock. It could not be fired without unlocking it. (140–141).

3. Claudio Ordonio, 20, single, farm laborer, testified that he was born on July 4, 1927. On October 6, 1946, he was sergeant of the Lupao homeguards. Exhibit 5 is their roster. (143). Exhibit 4 is his appointment as sergeant. He was in good terms with Antonio and Rufo Lajera. They were under his command. (144). At about 9 o'clock "our lieutenant came to see our post where we were guarding, as they told us to dig foxholes. After the inspection, they went to the volleyball game." (145). The witness told Antonio and Rufo Lajera to guard because he also wanted to go to the volleyball game. After the game, upon reaching the headquarters, he found there Feliciano Ganal and Manuel Umala. He asked them where the guards went and they said they did not know. (146). Afterwards Prudencio Arendela arrived followed by Rufo and Antonio Lajera. "I asked them, 'Why did you leave your post, don't you know that the Huks are near, and may enter the barrio.'" This was addressed to Rufo Lajera. The latter said, "Never mind if they enter the barrio," adding that they did not like to guard and "immediately loaded his gun." Upon seeing it, the accused said, "Why did you load your gun, if you want to kill me as your officer, I cannot do anything." The accused lay down on a bamboo bed "because I was afraid. (147). After a while I heard them saying that if they kill me they would go with the Huks, so I got up. 'Give me your gun Rufo,' I said. Then I snatched the gun. I delivered it to Feliciano Ganal. 'Please friend, give me my gun,'" he (Rufo) said, addressing Feliciano Ganal. Rufo was able to get his gun. Then "I told Feliciano Ganal to get ready in taking Rufo Lajera to town. (148). He failed to report to town "because he refused to guard, so I ordered him to be brought to town." Feliciano Ganal took his shoes and put them on. "Rufo Lajera told Antonio Lajera what to do and then Antonio immediately loaded his gun saying at the same time, 'You son of a bitch,' addressing to me. He was angry when he ap-

proached me. He approached me and pointed to me his gun. (149). Since he pointed at me his gun, I shot him first. When I saw Rufo Lajera pointed to me his gun, I also shot him." At that time Antonio Lajera had three magazines and Rufo two. Antonio and Rufo fell. "After that our First Sergeant came." The first sergeant, Juan Zarate "immediately took the gun. I gave him my gun. He asked me what we have done. I told him that Antonio and Rufo Lajera fought me, or they tried to fight me, and when Antonio Lajera pointed to me his gun, I shot him first. (151). When Antonio fell, Rufo pointed his gun at me and I also shot him first, that is what I told him." It is not true, as stated by Zarate, that the gun of Rufo Lajera was unloaded. (152). Zarate did not testify that he told him that Antonio and Rufo Lajera pointed their guns at him "because he was asking money to my mother and my mother was not able to give him any." (153). After the investigation, the accused went to town to report to lieutenant Cristobal La Peña and told him that "Rufo Lajera and Antonio Lajera fought me. I told him that when Antonio Lajera pointed his gun to me, I shot him first. When Antonio Lajera fell, his brother wants to shoot me so I shot him first also." (154). Then the witness went to the municipal building of Lupao to present himself to the policemen. "I told them that Antonio Lajera and Rufo Lajera had fought me and when Antonio pointed his gun at me, I shot him first and when Rufo also pointed his gun at me, I shot him first too. They sent me to jail." He presented himself at about 11.30 in the morning of October 6, 1946. Juan Quibilan took his statement Exhibit C. (155–156). The witness has never been investigated by the chief of police Bruno Arimbuyutan. Manuel Umala and Feliciano Ganal harbored ill feelings against the accused because he used to catch them sleeping and to report them to the first sergeant who punished them. "I ordered them to do some hard labor, as cutting grasses and picking up pieces of papers, for which they come to hate me." (160).

Juan Zarate, testifying as rebuttal witness for the prosecution, declared that he did not ask money from the mother of the accused. When counsel for the accused conversed with him, he said that he was not given money for his transportation fare in coming to Cabanatuan which amounted to ₱1.20. (204–205).

Upon the evidence, both of the prosecution and of the defense, there is no question that appellant shot to death Antonio and Rufo Lajera. What is controverted is how the accused killed them, whether angered because when he ordered Rufo Lajera to town accompanied by Feliciano Ganal and Manuel Umala, Antonio Lajera wanted to accompany his brother, or, as the accused wanted us

to believe, the two brothers pointed their guns at him, and he shot them first in self-defense.

The testimonies of Feliciano Ganal and Manuel Umala, testifying for the prosecution, have proved conclusively that the prosecution's version is the true one. The insignificant errors or discrepancies on minor details in their testimonies do not affect their truthfulness. As in this case, such errors and discrepancies, honestly committed, rather show sincerity. They are natural concomitants to human limitations. As the sun, although appearing to us as the greatest miracle in the universe, is not spotless, human beings cannot absolutely be free from faults. This is true even with the choicest paragons of the human species.

The truth of the testimonies of the witnesses for the prosecution, supported by the unbiased testimony of the chief of police of Lupao, Bruno Arimbuyutan, to whom the accused said that he killed the two brothers because they would not comply with his orders, is corroborated by a witness for the defense, Juan Zarate, who went to the scene immediately after hearing the shots and to whom the accused said that he killed the two brothers because they tried to fight him, and that the accused did not tell him that the deceased pointed their guns at him. According to his testimony, it is not credible that the deceased could have aimed their guns at the accused because Rufo Lajera's carbine was unloaded, so much so that the magazines were taken from his pockets, and, while Antonio Lajera's carbine had a magazine, the gun was locked and could not be fired without being unlocked first.

Against the overwhelming evidence of the prosecution, supported by Juan Zarate, a witness for the defense, there is only the wholly uncorroborated testimony of the accused which, on the other side, has not given any reasonable motive why the deceased brothers would have wanted to aim their guns at him.

The lower court erred in convicting appellant for the crime of double murder, a complex crime that is committed when two persons are killed as a result of the same murderous act of the accused. Each one of the deceased was killed by different and separate sets of shots, fired, respectively, through two independent sets of acts of the accused, each one aimed exclusively at a victim. (People *vs.* Layos, 60 Phil., 224.) The accused is guilty of two separate murders, qualified by treachery. As correctly recommended by the prosecution, he is entitled to the mitigating circumstance of voluntary surrender.

The appealed decision is modified and appellant is sentenced for each murder to an indeterminate penalty ranging from 10 years and 1 day, *prisión mayor*, to 17 years, 4 months and 1 day, *reclusión temporal*, to be served in

the manner provided for by article 70 of the Revised Penal Code, to indemnify the heirs of each deceased in the sum of ₱2,000, and to pay the costs.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L–1813. December 14, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* DELFIN GALLEGO, CONRADO SORIANO, ROMEO LACSON and DOMINADOR VERGARA, defendants and appellants.

1 CRIMINAL LAW; MURDER; EVIDENCE; ALIBI AS A DEFENSE.—The testimonies presented by appellants in support of their alibi cannot prevail over the testimonies of I and D who, without any motive that could have induced them to hurl a a false imputation, positively identified the four appellants as having been in the scene of the crime.

2. ID.; ID.; ID.; INVOLUNTARY DECLARATION HAS NO WEIGHT OR CREDENCE.—The pronouncement of the trial court that Exhibit 3–Gallego was not executed voluntarily by I is well supported by the evidence. I, testified that he was maltreated by Lt. F. M. of the Military Police Command and forcibly stamped in said exhibit his thumb previously smeared with ink. Detective P. S. said that I, when brought to his office, complained of the maltreatment inflicted on him by military police authorities and showed on his body signs of the maltreatment. M. M., a witness for the defense, testified that he saw that I was boxed by Lt. M, when I denied that he was responsible for killing Uy. I, according to M, was hit in the abdominal region and was given many blows until he became unconscious, and it was only after he had recovered that he said that he was one of those who threw the hand grenade, and the affidavit was prepared by Lt. M who later took hold of the hands of I and placed his thumbmark on it, the affidavit not having been read to I. The trial court found that I is uneducated who cannot read and can write only his name. Furthermore, I did not have the least motive to kill his employer who was paying him a monthly salary of ₱30, plus ₱0.50 a day for food and a free ration of three gantas of rice a week. Besides, for hauling rice for Uy's customers, he received tips from the latter so much so that he could net around ₱100 a month.

APPEAL from a judgment of the Court of First Instance of Occidental Negros. Cordova, J.

The facts are stated in the opinion of the court.

Vicente Ampil for appellants.

Assistant Solicitor General Inocencio Rosal and *Solicitor Jose G. Bautista* for appellee.

PERFECTO, *J.:*

On April 24, 1947, Conrado Soriano, accompanied by Romeo Lacson, went to the store in Bacolod of Esteban Uy, Chinese commonly known also as Wa Ken Yao, asking him money and rice, as had been done twice before.

This time Uy refused to give anything, alleging that his partner was absent. "From now on, until the third day, we will not meet anymore," said Conrado Soriano, who immediately left with his companion.

At about 7 o'clock in the evening of April 27, 1947, Sixto Impe, a laborer in the service of Uy and whose work was to haul rice from Uy's bodega to the public market, went to a public market at Smith Street for the purpose of drinking tuba. He met at the place the four appellants who were already drinking it. Conrado Soriano invited him to join them in the affair. Between 8 and 9 o'clock, appelants invited Impe to follow them. He inquired about the place, but he was told just to follow them. They went to Luzuriaga Street where the house of Uy is located. Soriano advised Impe that they were going to the house of Uy to throw a hand grenade, adding: "I am warning you not to tell anybody, because if you will inform somebody, we will kill you."

When they arrived in front of the house of Uy, they walked back and forth because there were plenty of people. To wait further for the people to get out from the place, Soriano and Impe drank tuba, while Delfino Gallego and Lacson entered the alley towards the house of Uy. After drinking tuba, Soriano invited Impe to go to the house of Uy to carry out their purpose. After reaching a nearby rice mill, Impe stopped. Soriano and Gallego went behind the house of Uy. Gallego climbed on the shoulders of Soriano and went up a window of the house of Uy. After a while, Gallego jumped down, and when he was on the ground, the hand grenade exploded in a room of Uy's house. The hand grenade was given by Soriano to Gallego. After the explosion, Lacson urged his companions to scamper away.

Sometime before the explosion, Tan Sin Tay, wife of Uy, was awakened, leaving her husband alone in the conjugal bed to see if their children were covered with blankets. At that time she heard the creaking of galvanized iron roofing but, paying no attention to it, she proceeded to the toilet to satisfy a physiological necessity. Then she heard the explosion and, upon returning to their room, she found her husband dead, bathed in his own blood. Later on, the authorities were able to retrieve in several places of the room shrapnels of hand grenade.

The testimony of Sixto Impe as to appellants' participation in the crime is corroborated by Luis Demalata who saw appellants the same night at Luzuriaga Street near the house of Uy, sometime before the explosion.

Vergara and Lacson signed, respectively, affidavits Exhibits F and G, both admitting their active participation in the throwing of the hand grenade in the house of Uy.

Appellants set up alibi as defense and tried to show that Vergara and Lacson were compelled to make the

affidavits Exhibits F and G through duress and that Impe is the one who threw the hand grenade that killed Uy and he is exclusively responsible for the crime.

The testimonies presented by appellants in support of their alibi cannot prevail over the testimonies of Impe and Demalata who, without any motive that could have induced them to hurl a false imputation, positively identified the four appellants as having been in the scene of the crime.

The insinuation that Impe was the only one responsible for the crime is based exclusively on the written declaration Exhibit 3–Gallego, dated May 14, 1947. But the pronouncement of the trial court that Exhibit 3–Gallego was not executed voluntarily by Impe is well supported by the evidence. Impe testified that he was maltreated by Lt. Felizardo Martir of the Military Police Command and forcibly stamped in said exhibit his thumb previously smeared with ink. Detective Primitivo Sumagaysay said that Impe, when brought to his office, complained of the maltreatment inflicted on him by military police authorities and showed on his body signs of the maltreatment. Marcelo Mendoza, a witness for the defense, testified that he saw that Impe was boxed by Lieutenant Martir, when Impe denied that he was responsible for killing Uy. Impe, according to Mendoza, was hit in the abdominal region and was given many blows until he became unconscious, and it was only after he had recovered that he said that he was one of those who threw the hand grenade, and the affidavit was prepared by Lieutenant Martir who later took hold of the hands of Impe and placed his thumbmark on it, the affidavit not having been read to Impe. The trial court found that Impe is uneducated who cannot read and can write only his name. Furthermore, Impe did not have the least motive to kill his employer who was paying him a monthly salary of ₱30, plus ₱0.50 a day for food and a free ration of three gantas of rice a week. Besides, for hauling rice for Uy's customers, he received tips from the latter so much so that he could net around ₱100 a month.

The trial court found Impe to be timid, inoffensive and submissive, and this character explains his inability to resist appellants' invitation for him to follow them to the scene of the crime.

The declarations of Vergara and Lacson that their extrajudicial confessions were exacted from them through illegal means by the police authorities had been belied by Judge Amante of the municipal court of Bacolod, former Assistant City Attorney Villarosa and detective Sumagaysay, and detectives Homogod and Vasquez. In the case of Lacson, he swore to his confession Exhibit G in the presence of several persons including Mrs. Jocson and Attorney Yusay, his sister and brother-in-law, respectively.

The lower court sentenced appellants to suffer the penalty of *reclusión perpetua*, to indemnify jointly and severally the heirs of Esteban Uy in the sum of ₱2,000, without subsidiary imprisonment in case of insolvency, and to pay their proportionate share of the costs. The sentence is in accordance with the facts and the law except that the indemnity should be raised, as recommended by the Solicitor General, to ₱6,000 in consonance with the doctrine laid down in the case of People *vs.* Amansec (L–927, 45 Offi. Gaz [Supp. to No. 9], 51) and, as thus modified, it is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.*, concur.

Judgment modified.

[No. L–1894. Diciembre 14, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* EUGENIO JOSÉ y BENJAMÍN DE GUZMÁN Y DE GUÍA, acusados y apelantes.

1. DERECHO PENAL; TRAICIÓN; PRUEBAS; LAS PRUEBAS DEL ESTADO DEMUESTRAN CLARAMENTE QUE LOS ACUSADOS HAN COMETIDO EL DELITO.—Las pruebas demuestran claramente que los acusados fueron los que ayudaron a los japoneses en arrestar y amarrar las manos de R. E., según J. P. y D. E.; fueron ellos los que ayudaron a los japoneses en el arresto de J. C., según G. de la R. y A. J. y fueron los que ayudaron a los japoneses cuando G. G. fué arrestado en su casa y muerto de un tiro al escaparse, según G. C., M. G. e I. A.

2. ID.; ID.; ID.; DEFENSA INCREIBLE NO SE PUEDE DAR PESO NI CRÉDITO.—La defensa ha presentado pruebas para establecer que cuando B. de G. y E. J. estaban cargando en el truck los muebles de E para ser llevados a Pasay, R. E. preguntó por el dueño del mismo, por tal motivo el oficial japonés bajó del truck, le dió palmadas y le empujó para que subiese al truck y le retuvo allí al saber que era un policía de Manila. *Se declara*: Que aunque los japoneses se distinguían por sus crueldades, no creemos que la simple pregunta por el dueño del truck había sido suficiente motivo para que el oficial japonés le maltratase y le arrestase después. Precisamente porque era policía de Manila hubiera sido objeto de cierta consideración.

APELACIÓN contra una sentencia del Tribunal del Pueblo.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Celestino L. de Dios en representación del apelante E. José.

D. Luis F. Santos en representación del apelante B. de Guzmán.

El Procurador General Sr. Felix Bautista Angelo y *el Procurador Sr. Francisco Carreon* en representación del Gobierno.

PABLO, *M.:*

A primeras horas del Sábado de gloria, 8 de Abril de 1944, un grupo de guerrilleros acorralaron la casa de Eugenio José en el barrio de Tañgos, municipio de Navotas. Provincia de Rizal, apedreándola por más de tres horas con el propósito de aterrorizar a sus moradores y a secuestrar si salía de la casa a Eugenio José que ya se distinguía por sus actividades projaponesas. Benjamín de Guzmán estaba entonces allí, acababa de llegar procedente de Tárlac. Eugenio José disparó dos tiros al aire para llamar la atención de los japoneses. Media hora después llegaban en truck algunos, bajo las órdenes de un teniente; pero a su llegada ya habían desaparecido los guerrilleros. Eugenio José informó al teniente Metani que encabezaba a los soldados, que los que apedrearon su casa eran miembros de la guerrilla. Los japoneses entonces, acompañados por los dos acusados, fueron en busca de aquéllos. Se dirigieron a la casa de Gregorio Guevara y al llegar cerca, Eugenio José llamó: "Goring, Goring." Como los moradores no abrían la puerta, los japoneses, empleando fuerza, entraron en la casa y le arrastraron escaleras abajo. Cuando Gregorio Guevara, aprovechándose del descuido del que le arrestó, echó a correr, Eugenio José exclamó: "Pegarle un tiro, que es un mal hombre" y Benjamín de Guzmán le dijo que no se escapase. Inmediatamente un tiro se oyó. Gregorio Guevara cayó desplomado, víctima del tiro. Fué cubierto con la arena de la playa. Al clarear el día, sus parientes recogieron su cadáver para llevárselo a su casa. Encontraron en su cuerpo una herida de entrada de un proyectil en la parte izquierda de la espalda y otra herida de salida debajo de la tetilla izquierda.

En la noche del mismo día, a eso de las ocho, los dos acusados con dos soldados japoneses fueron a la casa de Redentor Eugenio y le encontraron andando en dirección a su casa viniendo del solar de su suegro para recoger tomates. Los dos acusados aseguraron a los japoneses que Redentor Eugenio estaba en relación con los guerrilleros. Al oír la denuncia Redentor Eugenio contestó que no. Pero como los acusados insistiesen, los japoneses le arrestaron. Con el cordel que Eugenio José sacó del truck, Benjamín de Guzmán ató las manos de Redentor Eugenio y le metieron en el truck. En este vehículo, los soldados japoneses y los acusados se dirigieron a la casa de Jesús Co, a quien se le tenía también como simpatizador de la guerrilla. Al llegar cerca, Eugenio José vió a la esposa de Co en la ventana; la ordenó que bajase y abriese la puerta. Preguntó después dónde estaba su marido y al contestar que estaba arriba, Eugenio José y los dos soldados japoneses subieron por la escalera en pos de ella. Eugenio José estaba armado con revólver y los dos soldados japoneses con rifle Luego que vieron a Jesús Co, le ordenaron que levantase

las manos y después le arrestaron y le llevaron abajo. Como era delgado el cordel con que se le ató las manos, Eugenio pidió otro más grande, con el cual Benjamín de Guzmán amarró sus manos por la espalda. Dándole puntapiés, le ordenaron a Jesús Co a subir al truck.

Eugenio y Co fueron llevados a Manila en el truck. Desde entonces hasta el día de la vista en el Tribunal del Pueblo que tuvo lugar en Marzo de 1946 no se oyó ya nada de ellos, ni han vuelto a su casa. La esposa de Redentor Eugenio había acudido al acusado Eugenio José en el Legaspi Landing para preguntar por el paradero de su esposo; pero no le encontró y sus compañeros informaron a ella que Redentor no estaba más allí; a Benjamín de Guzmán pidió favor por la libertad de su marido. A pesar de la promesa, sin embargo, ya no volvió a ver a su marido.

El acusado Eugenio José ha sido empleado de la Tesorería de la Oficina Central de Makapili en Manila (Exhibits A–1, A–2 y C) y admite que estuvo trabajando, como encargado de recibir las contribuciones en dinero y en productos alimenticios y expedir "pase" a los que lo necesitaban, en la oficina de Benigno Ramos durante la ocupación japonesa hasta el enero de 1945. El artículo 4 de la Constitución del Makapili de que era tesorero es del tenor siguiente: "To collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines in such ways and means as may in the joint judgment of the Imperial Japanese Forces and the Association be deemed necessary and fruitful." El Exhíbit D, carta dirigida a Tandis (Benigno Ramos) por el acusado demuestra la intimidad que existía entre los dos. Para explicar la posesión del revólver que portaba, Eugenio José dice que lo obtuvo juntamente con un "pase" de los japoneses porque les informó que había dado libertad a cuarenta japoneses que estaban encerrados en la casa municipal de Navotas en los primeros días de la guerra, aunque en realidad—según él—no había más que dos o tres en el pueblo.

Para ganar la simpatía de los japoneses, Eugenio José firmó un documento en que hizo constar su adhesión y cooperación a los soldados invasores llevándolo consigo durante la ocupación japonesa, y que, copiado literalmente, (excluyendo la traduccion de cada línea en carácteres japoneses), dice así:

"EUGENIO S. JOSE *No. 27*

"*Name:* Eugenio José y Santos; *Date of birth:* August 25, 1903. "*Residence:* Tañgos, Navotas, Rizal; *Educational attainment:* High School Graduate; *Profession*: Teacher; *Present occupation*: Treasurer of Silañganin Commercial Co., Manila; *Services rendered to Imperial Forces:* Helper of Capt. Takemoto, Naval Military Police, Manila, in the confiscation of 30 firearms and commissioned to detect subversive elements since the occupation of the Imperial Army; helped the Military Police detailed in Navotas, Rizal, fetched the fallen airplane at Binowañgan Sea, Obando, Bulacan and delivered the

body of the deceased Japanese aviator to Bulacan, Bulacan Garrison in 1942; On or about Jan. 5, 1942 has helped the BBB Garrison in the confiscation of 1 scow of rifles and machine guns, 1 scow of crude oil and 3 scows of food supplies; *Former party affiliation:* Sakdal-Ganap; *Other circumstances:* hunted by authorities at the outbreak of war for being pro-Japanese but managed to evade arrest; *Character:* Industrious and efficient. (Fdo.) EUGENIO S. JOSE.

A copy of this is filed in the records of the Kaigun Feibi-Tai," (Exhibit A).

En defensa, el acusado Eugenio José declaró que no es verdad que él haya prestado los servicios relatados en el documento y si los ha puesto era para congraciarse solamente con los japoneses.

Eugenio José y Benjamín de Guzmán son primos, ambos *Ganaps,* iban siempre armados y en compañía de los soldados japoneses, y residían en el barrio de Tañgos, Navotas, Rizal, al tiempo de la comisión del delito de que se les acusa. Eugenio José era tan apreciado por los japoneses que éstos le conducían a su casa cuando se retiraba. Eugenio José en varias ocasiones improvisó *meetings* en Navotas convenciendo al público que coadyuvase a los japoneses, asegurando que los americanos ya no volverian. En las "Zonificaciones" de Navotas en que todos los habitantes varones habían sido encerrados, Eugenio José era el único que se salvaba porque tenía salvoconducto en su poder que le daba ese privilegio. A su petición, él y su familia fueron llevados por los japoneses a Pasay para evitar la represalia de las guerrillas o de los parientes de los que habían sido detenidos con la ayuda de él y de Benjamín de Guzmán.

Como defensa, los acusados arguyen que estaban con los soldados japoneses en el arresto de Gregorio Guevara y Redentor Eugenio porque fueron secuestrados por los japoneses que acudieron a la casa de Eugenio cuando los guerrilleros la apedrearon; que no es verdad que hayan indicado a los japoneses quiénes eran los miembros de la guerrilla. No se puede dar crédito a esta defensa porque las pruebas demuestran claramente que los acusados fueron los que ayudaron a los japoneses en arrestar y amarrar las manos de Redentor Eugenio, según Juliana Pascual y Dionisio Eugenio; fueron ellos los que ayudaron a los japoneses en el arresto de Jesús Co, según Graciana de la Rosa y Antonio José y fueron los que ayudaron a los japoneses cuando Gregorio Guevara fué arrestado en su casa y muerto de un tiro al escaparse, según Gertrudis Caseñas, María Guevara e Isabel Afable.

Benjamín de Guzmán, como defensa, alega que acababa de llegar en la casa de Eugenio José cuando fué apedreada; que fué allí para arreglar sus cuentas en el negocio de arroz; que los japoneses le ataron las manos y que le habían dejado en el truck con las manos atadas cuando los japoneses fueron a la casa de Gregorio Guevara. Tampoco merece crédito esta defensa porque Benjamín de Guzmán fué el que, ayudando a los soldados japoneses, les

acompañó a la casa de Gregorio Guevara y fué quien cubrió con arena el cadáver de Guevara que cayó muerto de un tiro y fué quien ató las manos de Jesús Co cuando éste fué arrestado en su casa.

Para explicar el arresto de Redentor Eugenio, la defensa ha presentado pruebas para establecer que cuando Benjamín de Guzmán y Eugenio José estaban cargando en el truck los muebles de Eugenio para ser llevados a Pasay, Redentor Eugenio preguntó por el dueño del mismo, por tal motivo el oficial japonés bajó del truck, le dió palmadas y le empujó para que subiese al truck y le retuvo allí al saber que era un policía de Manila. Aunque los japoneses se distinguían por sus crueldades, no creemos que la simple pregunta por el dueño del truck había sido suficiente motivo para que el oficial japonés le maltratase y le arrestase después. Precisamente porque era policía de Manila hubiera sido objeto de cierta consideración.

La teoría de la defensa de que Jesús Co fué arrestado a petición de dos Chinos a quienes engañó en su negocio de *tinapa* y *tuyó*, no merece seria consideración. El negocio de Co consistía en la compra de pescados en Navotas y los convertía en *tinapa* y *tuyó*. Su esposa tenía encargados para venderlos en el mercado de la Divisoria, Manila, con un 10 por ciento de comisión. No podía haber engañado Jesús Co a los encargados de vender su mercancía. No tenía relación directa con ellos. Acaso éstos podían haberse apoderado del producto de la venta, y en tal caso el perjudicado sería Co. Para continuar disfrutando de su comisión, no les convenía a los agentes hacer desaparecer al productor.

La condena de reclusión perpetua con las accesorias. multa de ₱10,000 con la mitad de las costas impuesta a los acusados está ajustada a las pruebas y al artículo 114 del los Código enal Revisado.

Confirmamos la sentencia apelada con costas.

Moran, Pres., Parás, Feria, Perfecto, Bengzon, Briones, Tuason, y Montemayor, MM., están conformes.

Se confirma la sentencia.

[No. L-2061. December 14, 1948]

DOMINGO B. MADDUMBA, Justice of the Peace of Solano and Bagabag, Nueva Vizcaya, petitioner, *vs.* ROMAN OZAETA, in his capacity as Secretary of Justice and RAFAEL DE GUZMAN, respondents.

1. PUBLIC OFFICERS; STATUTES; SECTION 49 OF COMMONWEALTH ACT NO. 1, CONSTRUED AND APPLIED.—Section 49 of Commonwealth Act No. 1, particularly the benefits thereof relative to retaining the position and pay of any government employee called for training under the provisions of said Act, refers only to those employees called for trainee instruction (persons between

the ages of 20 and 22), which, of course, cannot apply to the respondent herein, and to those employees called for "regular annual active duty training," such as the respondent herein when called for training in the year 1939. It is important to bear in mind that this is only annual active duty training. It is not exactly *service* in the army but only *training*, and, as already stated, said training cannot be extended to more than 30 days in any calendar year in time of peace except with consent of the reservist. In other words, the law contemplated mere absence or non-attendance, and a temporary one at that, on the part of the employee, from his public office or government work. In fact section 49 uses the word "absence," denoting a provisional or temporary failure to attend or be present at the office; and it was but just and fair when it is provided in section 49 of the National Defense Act that when the Army calls its reservists for annual active duty training for several days a year not exceeding 30 days, said reservists should not lose their government positions or pay while undergoing such training during a short period of time.

2. ID.; ID.; ID.—The provisions of section 49 of Commonwealth Act No. 1, known as National Defense Act, allowing employees of the government to keep their positions and continue receiving the pay corresponding to them, refer only to those trainees and reservists called for trainee instruction or for regular annual active duty training, for a short and limited period of time each year, involving a short, temporary absence from duty in the government office concerned; and they cannot apply to a government employee or official who leaves his post to join the Constabulary or armed forces, not for mere training but for regular service and for a long period of time.

3. ID.; ID.; WORDS AND PHRASES; "DEMOBILIZED," MEANING OF.—The word "demobilized" implies the mustering out and disbanding or dismissal from service with the colors and not the cessation of the annual training of trainee or reservists for a short period of time. When a reserve officer or a trainee, employed in the government, is called for training for, say, days or weeks, at the end of the period of the training he is not demobilized, for the simple reason that he was not in regular military service under an enlistment or commission. He merely resumes his interrupted work in the government.

4. ID.; ID.; SECTION 1 OF REPUBLIC ACT NO. 65, CONSTRUED AND APPLIED.—Section 1 of Republic Act No. 65 is intended to create a right or privilege where said right or privilege did not exist before. In other words, under said law, the government employees who served in the Philippine Army or in guerrilla organizations, are granted the right to be reinstated or recalled to their old posts or positions in the government. If the position now involved in these proceedings were an ordinary one, say, one in the executive department, Republic Act No. 65, might apply, because the law or any civil service rule or regulation governing appointment and tenure and salary under which any government employee is appointed, may be changed, amended or even repealed by the Legislature by any subsequent Act, like Republic Act No. 65.

5. ID.; CONSTITUTIONAL LAW; TENURE OF OFFICE OF JUSTICE OF THE PEACE CANNOT BE ADVERSELY AFFECTED BY LAW PROMULGATED AFTER APPOINTMENT AND QUALIFICATION.—The Constitution of the Philippines, particularly section 9, Article VIII thereof, secures to the members of any court, including that of the justice of the peace court, life tenure, conditioned on and during good behaviour and capacity to discharge the duties of the office, though, up to the age of 70 years. This constitutional guaranty

in tenure of office in favor of the petitioner as justice of the peace cannot be adversely affected and terminated by any act of the Legislature, especially, a law promulgated after the appointment and qualification of said petitioner, however just, patriotic and plausible the reason and motive behind the statute. (Republic Act No. 65 was approved, October 18, 1946.) For this reason, we also hold that section 1 of Republic Act No. 65 is not applicable to the present case which involves the office of justice of the peace.

6. ID.; ELECTIONS; FORFEITURE OF OFFICE BY FILING CERTIFICATE OF CANDIDACY.—By filing said certificate of candidacy, the respondent automatically lost and forfeited any right which he might have had to the office of justice of the peace of Solano and Bagabag. The applicable provisions of law on the subject is section 26 of Republic Act No. 180, otherwise known as the Revised Election Code, which reads thus: *"Every person holding a public appointive office or position shall ipso facto cease in his office or position on the date he files his certificate of candidacy."*

7. ID.; STATUTES; SECTION 26, ARTICLE II OF THE ELECTION CODE, INTERPRETED AND APPLIED.—Section 26, Article II of the Election Code contemplates the complete severance and cutting off of all relations with and right to a public appointive office on the part of one who files his certificate of candidacy in an election. The law embodied in section 26 of the Revised Election Code is clear and emphatic. It uses the phrase "shall *ipso facto* cease in his office." Webster's New International Dictionary, second edition, defines the word "cease" thus: To bring to an end; to discontinue or leave off etc. One cannot, very well, renounce or lose his right to a public appointive office by filing his certificate of candidacy for an elective post, as provided by law, and at the same time tie a string to said appointive position, holding the other end so that he could pull and have it back and keep it in the event that he lost in the elections.

ORIGINAL ACTION in the Supreme Court. Injunction.

The facts are stated in the opinion of the court.

The petitioner in his own behalf.

First Assistant Solicitor General Roberto A. Gianzon, Solicitor Felix V. Makasiar, and *Rafael de Guzman* for respondents.

MONTEMAYOR, *J.:*

Both parties, the petitioner Domingo B. Maddumba and respondent Rafael de Guzman, are agreed on the following facts:

Maddumba actually is the justice of the peace of the municipalities of Solano and Bagabag, Province of Nueva Vizcaya, appointed on July 31, 1946 by the President of the Philippines, said appointment having been confirmed by the Commission on Appointments on August 9, 1946. Since then up to the present time he has been discharging the duties of said office. Respondent De Guzman was originally appointed justice of the peace for the same municipalities in November 1937. In January 1939, under the provisions of Commonwealth Act No. 1 known as the

National Defense Act, he was called, presumably for training, altho he calls it a tour of duty in the Philippine Army and was detailed to work on immigration matters with the rank of second lieutenant, up to May 1940 when he resumed his office as justice of the peace of the same municipalities in June 1940, and continued discharging his duties as such until June 1941. In July 1941 he joined the Philippine Constabulary with the rank of first lieutenant and continued in that service until the outbreak of the Pacific war in 1941. According to him, without denial by the petitioner, he (De Guzman) went to Bataan and after surrender, he was made a prisoner of war.

The petitioner equally claims, without denial by the respondent that the latter served during the Japanese occupation in the Inspector Division, Bureau of Constabulary, and was instructor in law subjects in Constabulary Academy No. 3; that upon liberation he (respondent) was reactivated to the Philippine Army and promoted to the rank of captain and was on duty with the Recovered Personnel Division from April 21, 1945. De Guzman was demobilized from the Philippine Army on March 10, 1947, and, two days after, he wrote to the then Secretary of Justice, the other respondent Honorable Roman Ozaeta, expressly asking for his reinstatement to his old post of justice of the peace of Solano and Bagabag, invoking the benefits of the provisions of Commonwealth Act No. 1 (National Defense Act) and Republic Act No. 65 (Philippine Army Bill of Rights). The application was favorably considered by the Secretary of Justice, and was endorsed to the Chief of the Executive Office, with his recommendation that pursuant to section 1 of Republic Act No. 65, "De Guzman be re-appointed to his pre-war position as justice of the peace of Solano and Bagabag, Province of Nueva Vizcaya, it appearing that he is a member of the Bar and therefore qualified for the position." It was likewise recommended in the same indorsement that "Mr. Domingo B. Maddumba, the present incumbent be advised to tender his resignation and that, if he fails or refuses to do so, the office will be declared vacant."

While the matter was still being considered by the Executive Office, respondent De Guzman, on September 1, 1947, filed his certificate of candidacy for the position of Vice-Mayor of Lingayen, Pangasinan, in the elections of November 11, 1947. He went through the elections but was not elected. Then on December 12, 1947, after having failed in his political venture, De Guzman wrote to the Secretary of Justice, requesting information as to the status of his application for reinstatement as justice of the peace of the circuit of Solano and Bagabag. Thereafter, respondent Secretary of Justice Ozaeta issued Administrative Order No. 13, series of 1948, dated February

13, 1948, bearing the heading—"Reinstating certain justices of the peace to their pre-war positions," wherein, invoking the decisions of this Court in the cases of Tavora *vs.* Gavina (L–1257, 45 Off. Gaz., 1769, 1776) and Garces *vs.* Bello (L–1363, 45 Off. Gaz., 3340), a number of former justices of the peace were ordered reinstated, among them the respondent Rafael de Guzman as justice of the peace of Solano and Bagabag, and the petitioner Domingo B. Maddumba was ordered to vacate his post and surrender the same to Rafael de Guzman.

In his petition, dated March 6, 1948, and filed in this Court on the same date, which petition was subsequently amended, the petitioner seeks to enjoin the respondent Secretary of Justice "from enforcing said Administrative Order No. 13, series of 1948, in so far as the petitioner is concerned; likewise restraining respondent Rafael de Guzman from entering into the discharge of the duties of the office of justice of the peace of Solano and Bagabag, Nueva Vizcaya; and restraining both respondents from molesting and interfering in any manner with the said office." Upon the filing of a bond in the sum of ₱100, this Court issued a writ of preliminary injunction restraining the Secretary of Justice from enforcing said Administrative Order No. 13, series of 1948, in so far as the petitioner is concerned and restraining respondent De Guzman from entering into the discharge of the duties of the office of justice of the peace of Solano and Bagabag, and restraining further both respondents from molesting and interfering in any manner with the said office until further orders of this Court. The petitioner now seeks to have this writ of preliminary injunction made permanent.

The petitioner contends that respondent has already lost his right to the office in question by reason of his joining the Philippine Constabulary or Army, and if not, by his having filed his certificate of candidacy in September 1947, as provided by section 26 of Republic Act No. 180; and that section 1 of Republic Act No. 65 does not and cannot apply to a case like the present where a judicial position is involved. On the other hand, respondent equally maintains that he is protected by Commonwealth Act No. 1 and Republic Act No. 65, and that, furthermore, section 26 of the Election Code did not apply to him for the reason that when he filed his certificate of candidacy, he was not holding the office of justice of the peace of Solano and Bagabag.

After a careful study of the legal aspects of the present case, particularly in relation to the Constitution, Commonwealth Act No. 1, Republic Act No. 65, and Republic Act No. 180 known as the Election Code, we are constrained to agree with the petitioner that the respondent has lost his right to the position of justice of the peace of Solano and

Bagabag, by abandonment, or else, through forfeiture. Respondent bases his claim and right to reinstatement, first on Commonwealth Act No. 1, particularly section 49 thereof. Section 49 of Commonwealth Act No. 1, reads as follows:

"Any employee of the Government called for *trainee instruction*, or for *regular annual active duty training*, shall not be compelled to lose his position or to suffer a lose of pay due to his absence in the fulfillment of his military obligations." (Italics ours.)

In order to properly and intelligently construe said section, understand the meaning and scope of the clause "called for trainee instruction or for regular annual active duty training" used therein and apply it to an actual case, particularly the present one, we have to consider the whole Commonwealth Act No. 1. Said Act divides the Philippine Army contemplated by it into the Regular Force and the Reserve Force (section 17). The respondent claims, and there is reason to believe, that his claim is correct, that he belonged not to the regular force but to the reserve force. He himself admits that, had he served in the regular force, his position there would have been permanent, and incompatible with his office as justice of the peace and that, by accepting appointment to the regular force, he would have had to abandon his judicial office.

Then, section 52 of the same Commonwealth Act No. 1, provides as follows:

"The obligation to undergo military training shall begin with youth in school, commencing at the age of ten years, and shall extend through his schooling until he shall reach the age of eighteen years. At this age he shall enter the Junior Reserve to which he shall be assigned until he is twenty-one years of age when he shall become subject to service with the colors, and thereafter with the Reserve Force until he shall reach fifty years of age. The training which he may undergo prior to the calendar year in which he attains twenty-one years of age shall be termed 'Preparatory Military Training.'

"All school girls shall receive such instruction and training as the Chief of Staff may deem necessary for auxiliary service.

"All able-bodied male citizens between the ages of twenty years and fifty years, both inclusive, except those specifically exempted, shall be classified as follows:

"*Trainees.*—Those between the ages of twenty and twenty-two who have been selected to receive military training.

"*First Reserve.*—Those between the ages of twenty-two years and thirty years, both inclusive, and including also all those who have completed trainee instruction even though they may not have attained the age of twenty-two.

"*Second Reserve.*—Those between the ages of thirty-one years and forty years, both inclusive.

"*Third Reserve.*—Those between the ages of forty-one years and fifty years, both inclusive."

It is evident that because of his age when called for training in the year 1939, the respondent must have responded not as a trainee but as a reservist, either as first, second, or third, depending upon his age then. He claims

that he was a reserve officer. Title II, Article VII of Commonwealth Act No. 1 is entitled "Active Duty Training of Reservists." Section 47 under the same title and article provides that: "In so far as may be practicable, the active duty periods for the three echelons shall be as follows: First Reserves, annually, not less than ten days; Second Reserves, annually, not less than five days; and Third Reserves, every third year, not less than seven days." It further provides that, "Except with his own consent, no enlisted reservist may be required in time of peace to serve more than thirty days on active duty in any calendar year."

Considering the legal provision above-mentioned, it is apparent that section 49 of Commonwealth Act No. 1 already above reproduced, particularly the benefits thereof relative to retaining the position and pay of any government employee called for training under the provisions of said Act, refers only to those employees called for trainee instruction (persons between the ages of 20 and 22), which, of course, cannot apply to the respondent herein, and to those employees called for "regular annual active duty training", such as the respondent herein when called for training in the year 1939. It is important to bear in mind that this is only annual active duty training. It is not exactly *service* in the army but only *training,* and, as already stated, said training cannot be extended to more than 30 days in any calendar year in time of peace except with consent of the reservist. In other words, the law contemplated mere absence or non-attendance, and a temporary one at that, on the part of the employee, from his public office or government work. In fact section 49 uses the word "absence," denoting a provisional or temporary failure to attend or be present at the office; and it was but just and fair when it is provided in section 49 of the National Defense Act that when the Army calls its reservists for annual active duty training for several days a year not exceeding 30 days, said reservists should not lose their government positions or pay while undergoing such training during a short period of time. But when the respondent joined the Philippine Constabulary in July, 1941, during peace time and stayed with it indefinitely and up to the outbreak of the Pacific war, we have serious doubts that he did so only for the regular annual active duty training of merely several days not exceeding 30 days. There is reason to believe that he joined the regular force of the Constabulary for the regular enlistment, not for mere annual active duty training. Again, when after liberation he was reactivated into the Philippine Army, it was not, and could not have been, on the basis of the regular annual active duty training for only several days or weeks not exceeding 30 days, but for regular service in the armed forces of the Philippines, because at that time,

after liberation men were being called or urged to join the Philippine Army, not for any training as contemplated by the National Defense Act, but for regular enlistment and service, because said army was then being reorganized. As a matter of fact, after the Pacific war, respondent served in said armed forces for about two years until he was demobilized in March, 1947. Even the word "demobilized," used by both parties in describing the separation of the respondent from the Philippine Army, implies the mustering out and disbanding or dismissal from service with the colors and not the cessation of the annual training of trainee or reservists for a short period of time. When a reserve officer or a trainee, employed in the government, is called for training for, say, days or weeks, at the end of the period of the training he is not demobilized, for the simple reason that he was not in regular military service under an enlistment or commission. He merely resumes his interrupted work in the government. For this reason, we believe and hold that section 49 of Commonwealth Act No. 1 does not apply to the case of the respondent who, in July, 1941 left his post as justice of the peace, not to undergo the regular annual active duty training for several days, or at the longest, weeks, but to join the regular Constabulary force with which he stayed up to the outbreak of the last war, and who, later, after liberation, re-enlisted in the Philippine Army, not for training, but for military service where he remained in active military service up to the date of his being mustered out in 1947. It is unreasonable to believe that said section 49 could have contemplated and intended holding a public office, specially a judicial position like that of justice of the peace, not only open but as still being held (including the salary corresponding to it) by one who leaving it in July 1941, joined the Army for military service and stayed with it for several years, and seeks to return to it only after he was mustered out in 1947.

Let us next consider section 1 of Republic Act No. 65. It reads as follows:

"Officers and enlisted men in good standing of the Philippine Army and of recognized or deserving guerrilla organizations who took active participation in the resistance movement, and/or in the liberation drive against the enemy, who, in civilian life, were actually occupying appointive positions in any office, instrumentality, branch or agency of the Commonwealth Government, or in any government-owned or subsidized corporation, and who, upon being inactivated or mustered out of the armed forces, desire to resume their old positions or employments, are hereby granted the right to do so, and, upon proper application, shall be recalled to their respective pre-war positions or employments, unless they have committed any act which under existing laws would disqualify them from further holding public office. For the purpose herein set forth, it shall be the duty of the official who is by law authorized to recall and/or make the appointments of officials and employees above mentioned to hold open the positions and employments referred to in this section until

six months after the approval of this Act: *Provided, however,* That if any such positions had already been filled with the appointment of any person other than the veteran, the said position is automatically declared vacant and open upon the application of the veteran."

The above provision of law is intended to create a right or privilege where said right or privilege did not exist before. In other words, under said law, the government employees who served in the Philippine Army or in guerrilla organizations, are granted the right to be reinstated or recalled to their old posts or positions in the government. If the position now involved in these proceedings were an ordinary one, say, one in the executive department, Republic Act No. 65, might apply, because the law or any civil service rule or regulation governing appointment and tenure and salary under which any government employee is appointed, may be changed, amended or even repealed by the Legislature by any subsequent Act, like Republic Act No. 65. However, the Constitution of the Philippines, particularly section 9, Article VIII thereof, secures to the members of any court, including that of the justice of the peace court, life tenure, conditioned on and during good behaviour and capacity to discharge the duties of the office, though, up to the age of 70 years. The constitutional guaranty in tenure of office in favor of the petitioner as justice of the peace cannot be adversely affected and terminated by any act of the legislature, especially, a law promulgated after the appointment and qualification of said petitioner, however just, patriotic and plausible the reason and motive behind the statute. (Republic Act No. 65 was approved, October 18, 1946.) For this reason, we also hold that section 1 of Republic Act No. 65 is not applicable to the present case which involves the office of justice of the peace.

As regards the effect, if any, of the filing of the certificate of candidacy by the respondent in the elections of November 11, 1947, we also agree with the petitioner that by filing said certificate of candidacy, the respondent automatically lost and forfeited any right which he might have had to the office of justice of the peace of Solano and Bagabag. The applicable provisions of law on the subject is section 26 of Republic Act No. 180, otherwise known as the Revised Election Code, which reads thus:

"Every person holding a public appointive office or positon shall *ipso facto* cease in his office or postion on the date he files his certificate of candidacy."

But the respondent contends that, at the time he filed his certificate of candidacy, he was not holding the office of justice of the peace of Solano and Bagabag, and for that reason section 26 of the Election Code, above quoted is not applicable. From this contention we infer that at the time, he was not the justice of the peace of that circuit, but that he merely had some kind of right to it. Following

his line of reasoning, then he does not and cannot invoke the provisions of section 49, Commonwealth Act No. 1 which provides that "an employee of the government called for trainee instruction or for regular annual active duty training shall *not be compelled to lose his position* or to suffer a *loss of pay*," etc. If said provision were to be applied, to his case, then the respondent in leaving his post of justice of the peace in 1941, did not lose his position, but retained it and kept on holding it, and that he merely went on an extended leave of absence, in which case, it must necessarily and logically follow that he was, at the time of filing his certificate of candidacy, *still holding* the office of justice of the peace, whose duties he could validly resume after his extended leave of absence and his alleged period of training. In that case, section 26, Article II of the Election Code will apply. The result would be that he automatically ceased in and lost the office as justice of the peace when he filed his certificate of candidacy in 1947.

In our opinion, section 26, Article II of the Election Code contemplates the complete severance and cutting off of all relations with and right to a public appointive office on the part of one who files his certificate of candidacy in an election. The law embodied in section 26 of the Revised Election Code is clear and emphatic. It uses the phrase "shall *ipso facto* cease in his office." Webster's New International Dictionary, Second Edition, defines the word "cease" thus: To bring to an end; to discontinue or leave off etc. One cannot, very well, renounce or lose his right to a public appointive office by filing his certificate of candidacy for an elective post, as provided by law, and at the same time tie a string to said appointive position, holding the other end so that he could pull and have it back and keep it in the event that he lost in the elections.

In conclusion, we hold that the provisions of section 49 of Commonwealth Act No. 1, known as National Defense Act, allowing employees of the government to keep their positions and continue receiving the pay corresponding to them, refer only to those trainees and reservists called for trainee instruction or for regular annual active duty training, for a short and limited period of time each year, involving a short, temporary absence from duty in the government office concerned; and they cannot apply to a government employee or official who leaves his post to join the Constabulary or armed forces, not for mere training but for regular service and for a long period of time. Furthermore, even assuming for a moment that under section 49 of the National Defense Act, the respondent did not lose his position of justice of the peace of Solano and Bagabag, in spite of his joining the Philippine Constabulary in July 1941, and, later, the Army, in 1945,

and staying away from his old judicial post for over six years, then he lost any and all right to said position by reason of his having filed his certificate of candidacy for the elective post of Vice-Mayor of Lingayen, Pangasinan, in the elections in November 1947. We further hold that section 1 of Republic Act No. 65 cannot apply to a post of justice of the peace where the present incumbent thereof had qualified and assumed office prior to the promulgation of said Act because the application of the provisions of said law would be violative of the constitutional guaranty on the tenure in office in judicial positions.

In view of the foregoing, we declare Administrative Order No. 13, series of 1948, void and of no effect as far as the petitioner herein is concerned; and we declare the petitioner as the lawful justice of the peace of Solano and Bagabag, Province of Nueva Vizcaya, entitled to all the rights, privileges, emoluments and prerogatives appurtenant thereto; and it is hereby ordered that the writ of preliminary injunction heretofore issued by this Court be made permanent. No pronouncement as to costs. So ordered.

Moran, C. J., Parás, Pablo, Perfecto, Bengzon, Briones, and *Tuason, JJ.,* concur.

FERIA, *J.:*

I concur in the result on the third ground set forth in the decision. I dissent from the other two grounds.

Writ made permanent.

DECISIONS OF THE COURT OF APPEALS

[No. 2242-R. July 23, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIO DOLFO Y FELIX, defendant and appellant

1. CRIMINAL LAW; HOMICIDE; SELF-DEFENSE; PROVOCATION, AS AN ELEMENT OF SELF-DEFENSE; ITS MEANING.—When the law speaks of provocation either as a fitigating circumstance or as an essential element of self-defense, it requires that the same be *sufficient* or proportionate to the act committed and adequate to arouse one to its commission. It is not enought that the provocative act be unreasonable or annoying. In the language of the Supreme Court of Spain a "pequeña cuestión de amor propio no justificaba (justifica) en modo alguno la ira que le impelió a herir y matar a su contrario." (Sentencia de 27 de junio de 1883, Gaceta de 27 de septiembre.)
2. ID.; ID.; ID.; ACT OF UNLAWFUL AGGRESSION CARRIES IN ITSELF SUFFICIENT PROVOCATION; CASE AT BAR.—In the case at bar, granting that the accused's attitude in not coming to the deceased in answer to the latter's call, and in asking him instead: "Why are you calling me?" mortified and annoyed the deceased because, occupying as he did a higher and more respectable position than that of the accused, the latter was expected to be more considerate and obedient to him, it is nevertheless believed that this little question of pride was not sufficient to justify the deceased's attempt to inflict corporal punishment upon the accused by throwing at him a piece of wood four inches long and two inches thick. His action—obviously unlawful—was reasonably sufficient to produce in the mind of the accused the required influence to impel him to retaliate, as in fact he did, by throwing at the deceased the same piece of wood. The deceased, once hit on the back by the piece of wood, instead of reflecting upon what he had done and upon what he had provoked the accused to do, mounted in greater rage and approached the latter, insulting him all the while, then hitting him with his fists and later with the piece of wood Exhibit 1. These acts of unlawful aggression carried in themselves sufficient provocation. Provocation may be imbibed in the act of unlawful aggression itself (People *vs.* Alconga, SC. G.R. No. L-162, April 30, 1947).
3. ID.; ID.; ID.; REASONABLE NECESSITY OF THE MEANS USED TO REPEL AGGRESSION; DETERMINATION OF.—The Supreme Court has said more than once that in deciding whether or not a particular means employed to repel an aggression is reasonable, the person under attack should not be expected to judge things calmly and to act cooly or serenely as one not under stress or not facing a danger to life or limb. The court must place itself in the situation of the person object of the aggression and considering the situation the latter was facing at the time decide whether any reasonable man placed in the same circumstances would have acted in the same way.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Jorge V. Jazmines for appellant.

Assistant Solicitor-General Torres and *Solicitor Bautista* for appellee.

DIZON, *J.:*

Charged with murder in the court below Antonio Dolfo was tried and found guilty thereof and, considering in his favor the mitigating circumstance of lack of intention to commit so grave an offense as was committed, said court sentenced him to suffer "an indeterminate penalty of from four (4) years, two (2) months and one (1) day to ten (10) years and one (1) day, to indemnify the heirs of the deceased Segundo Llamas in the sum of ₱2,000 without subsidiary imprisonment in case of insolvency to pay the same indemnity, and to pay the costs." The accused appealed and now contends that the lower court committed the following errors:

I

"Al declarar probado que la riña en que el occiso Segundo Llamas recibió la herida mortal fue provocada por el acusado Antonio Dolfo y no por el occiso.

II

"Al declarar probado que el acusado se preparó para la riña con el occiso, cuando vió que éste se dirigio a El.

III

"Al no reconocer como probado el hecho de que, en el caso de autos, la agresión provino del occiso y no del acusado.

IV

"Al declarar probado que la riña en que el occiso recibió la herida mortal, tuvo lugar inmediatamente despues de que el occiso llegara al sitio en que el acusado habia estado trabajando.

V

"Al declarar probado que el occiso recibió la herida mortal *antes* de que Cornelio Eusebio hubiera tratado de intervenir en pro de la paz; y no *despues* de haber el occiso rechazado la intervención de éste.

VI

"Al declarar insostenible la teoria de la 'defensa propia', invocada por el acusado.

VII

"Al no appreciar, ni tener para nada en cuenta, varios hechos, circumstancias y detalles existentes en autos; y que fuertemente apoyan la alegación de 'defensa propia' hecha por el acusado.

VIII

"Al cerrar los ojos y volver por completo las espaldas, en el caso de autos, al fundamental principio de la 'duda racional' establecida por la ley, a favor del acusado.

IX

"Al dictar sentencia condenando al acusado por homicidio; en vez de haberlo absuelto, como debia haberlo hecho, de acuerdo con lo establecido en el párrafo 4 del artículo 8 del Código Penal vigente."

It is not disputed that in the afternoon of June 25, 1947 the appellant struck the now deceased Segundo Llamas with a screw driver, Exhibit C, wounding him 9 cm.

deep on the left upper chest, as a result of which Llamas died soon thereafter. The burden of proof, therefore, is on the part of the appellant to show that he acted in legitimate self-defense.

According to the witnesses for the prosecution the following were the circumstances under which the alleged crime was committed:

In the afternoon of June 25, 1947, Antonio Dolfo, Segundo Llamas and Tomas Mansion were working in the shop of the Earnshaw Docks and Honolulu Iron Works located at Port Area, Manila, Dolfo and Mansion cleaning a big motor and Llamas working on the transformer thereof. Mansion left his place to drink and when he returned he saw Llamas chasing the appellant, for reasons unknown to him, with a piece of wood, Exhibit 1, succeeding in hitting him three times and in three different places, namely, the breast, the left cheek and the left forearm. After Llamas had hit the appellant three times Cornelio Eusebio, another laborer, approached them and although while attempting to stop the fight Llamas also hit him with the same piece of wood on the right forearm, he succeeded in separating them. Soon thereafter, however, Llamas fell to the ground and once taken to the dispensary of the company he was found to be suffering from a stab wound on the chest, of which he died a few moments later.

The evidence for the prosecution does not disclose the facts that led Llamas to chase the appellant with the piece of wood, Exhibit 1. On the other hand, the appellant, while admitting that he struck Llamas on the chest with the screw driver, Exhibit C, testified that while he was working with Mansion cleaning a big motor that afternoon, Llamas called for him, but instead of approaching the latter he continued working and answered back: "Why are you calling me?" Apparently angered by this attitude of the appellant, Llamas threw at him a piece of wood, four inches long and two inches thick, but missed. In retaliation—jokingly according to the appellant—he picked up the same piece of wood and hurled it back against Llamas hitting the latter on the back. Llamas then started approaching him in a menacing attitude, uttering insulting words all the while, in view of which the appellant stopped working, placed the screw driver, Exhibit C, with which he was working, in his pocket and started to run. Overtaken by Llamas the latter struck him with his fists and afterwards picked up the piece of wood, Exhibit 1, and hit him with it. The appellant again started to run away, but overtaken anew Llamas struck him three times successively with the same piece of wood. It was at that stage that Cornelio Eusebio intervened to separate them.

It is the contention of the appellant that Eusebio's intervention was in vain and that the same notwithstanding

Llamas continued hitting him with the piece of wood, Exhibit 1, in view of which he resumed his retreat until he was cornered one and one-half meters away from the galvanized iron sheet wall of the shop where Llamas hit him again on the right temple; that he then pulled the screw driver, Exhibit C, out of his pocket to scare Llamas, but inasmuch as the latter continued hitting him with the piece of wood he stabbed him on the chest with the screw driver.

We find this part of appellant's version unacceptable. Judging from the testimony of the witnesses for the prosecution, Cornelio Eusebio succeeded in separating the combatants and almost immediately thereafter Llamas fell to the ground as a result of a wound on the chest caused by appellant's screw driver. It is, therefore, our opinion that the wound was inflicted in the course of the fight before Eusebio succeeded in stopping the same.

Upon these facts we are now to decide whether or not the appellant acted in self-defense. The first question confronting us is: Who provoked the fight?

It is admitted that the deceased Llamas was an electrician, the appellant and Mansion being his assistants. When Llamas called for the appellant and the latter, instead of approaching, asked him: "Why are you calling me?", was this, in the eyes of the law, *sufficient provocation* on the part of the appellant? In other words, supposing that in view of appellant's attitude Llamas became enraged and assaulted him, could Llamas have invoked *sufficient provocation* on the part of the appellant as a mitigating circumstance or as an element of self-defense?

The question, we believe, must be answered in the negative. When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, it requires that the same be *sufficient* or proportionate to the act committed and adequate to arouse one to its commission. It is not enough that the provocative act be unreasonable or annoying. In the language of the Supreme Court of Spain a "pequeña cuestión de amor propio no justificaba (justifica) en modo alguno la ira que le impelió a herir y matar a su contrario." (Sentencia de 27 de junio de 1883, Gaceta de 27 de septiembre.)

Granting that appellant's attitude in not coming to Llamas in answer to the latter's call, and in asking him instead: "Why are you calling me?" mortified and annoyed Llamas because, occupying as he did a higher and more respectable position than that of the appellant, the latter was expected to be more considerate and obedient to him, we are nevertheless of the opinion that this little question of pride was not sufficient to justify Llamas' attempt to

inflict corporal punishment upon the appellant by throwing at him a piece of wood four inches long and two inches thick. We cannot assume that he was joking when he threw the piece of wood aforesaid at the appellant. To the contrary, angered as he was by appellant's attitude, he must have thrown the piece of wood at him in a spirit of vindictiveness, to inflict punishment. The higher position occupied by Llamas—or by anybody else for that matter—did not give him any justification to inflict corporal punishment upon his subordinate just for a trifle. In discussing this point we have assumed that because of the higher level and greater respectability or dignity of the position occupied by Llamas and because of the tone in which the appellant asked him: Why are you calling me?", Llamas had all the reason in the world to feel annoyed. As a matter of fact, however, appellant's attitude and remark could have been anything but unreasonable or annoying. It could have been but a mere friendly joke which Llamas unfortunately misunderstood.

Let us now consider the action of the deceased Llamas in throwing a piece of wood, four inches long and two inches thick, at the appellant. Did it constitute provocation sufficient either to justify an assault by the appellant or at least to mitigate his responsibility if he did so? In our opinion this question must be answered affirmatively. As heretofore stated, for a mere trifle, Llamas had absolutely no right to inflect corporal punishment upon his assistant. His action—obviously unlawful—was reasonably sufficient to produce in the mind of the appellant the required influence to impel him to retaliate, as in fact he did, by throwing back at Llamas the same piece of wood. We are not convinced, of course, that the appellant did so jokingly, but even if he did throw the piece of wood in a spirit of vindictiveness, it is obvious that his action was a mere act of retaliation. It was the deceased Llamas who committed the first unlawful act constituting sufficient provocation, and after that he should have been ready to face and accept the ordinary consequences thereof. Once hit on the back by the piece of wood thus thrown at him by the appellant, Llamas, instead of reflecting upon what he had done and upon what he had provoked the appellant to do, mounted in greater rage and approached the latter, insulting him all the while, then hitting him with his fists and later with the piece of wood, Exhibit 1. We have no doubt that these acts of unlawful aggression carried in themselves sufficient provocation. Provocation may be imbibed in the act of unlawful aggression itself (People *vs.* Alconga S.C. G.R. No. L–162, April 30, 1947).

We now come to the question of the reasonableness of the means employed by the appellant to repel the aggression.

As just stated, after being hit by the piece of wood thrown at him by the appellant, Llamas approached the latter, uttering insulting words while so doing, and once at a striking distance gave him a fist blow and then pursued him with the piece of wood, Exhibit 1, to which a nail is attached. This Exhibit 1 and the screw driver, Exhibit C, were delivered by policeman Bayani to detective Dominador Tugade, of the Manila Police Department, with the information that he had found the same at the secene of the crime. We have seen and examined this piece of wood and although it is not of itself a deadly weapon it could be deadly if wielded by a strong man and if it lands on the proper spot, say the head. We believe, therefore, that in the circumstances of this case the appellant was entitled to believe—and to act accordingly—that the screw driver was a reasonable means with which to repel the aggression he was the victim of. The Supreme Court has said more than once that in deciding whether or not a particular means employed to repel an aggression is reasonable, the person under attack should not be expected to judge things calmly and to act as cooly or serenely as one not under stress or not facing a danger to life or limb. The court must place itself in the situation of the person object of the agression and considering the situation the latter was facing at the time decide whether any reasonable man placed in the same circumstances would have acted in the same way. It must be borne in mind that the appellant did not look for the screw driver to use it against his assailant. The screw driver was not a weapon but an instrument used by him in cleaning or scraping off paint from a motor. As he was attacked by the deceased Llamas he placed the screw driver in his pocket, started to run and drew it out and used it only when he found himself cornered facing his assailant, who was armed with the piece of wood, Exhibit 1. In these circumstances we feel certain that the means employed by him to repel the aggression was reasonably sufficient.

Summarizing our findings we have the following: There was lack of sufficient provocation on the part of the appellant; there was not only sufficient provocation but also unlawful aggression on the part of the deceased Segundo Llamas, and the means employed by the appellant to repel such aggression were reasonable. We are, therefore, of the opinion, and so hold, that the appellant has satisfactorily established all the conditions required by article 11, paragraph 1 of the Revised Penal Code and is entitled to an acquittal. The appealed judgment is, therefore, reversed and the appellant acquitted, with costs de oficio.

Montemayor, Pres., J.; and Concepcion, J. concur.

Judgment reversed; appellant acquitted.

[No. 2377-R. July 26, 1948]

LORENZO LLAMOSO, petitioner and appellant, *vs.* VICENTE FERRER, respondent and appellant *

1. ELECTION LAW; LOWER COURT'S DECISION AS TO VOTER'S QUALIFICATION FINAL IN NATURE; NOT APPEALABLE.—A decision disqualifying a voter and excluding him from the list of voters is final (sec. 104, Republic Act No. 180), and cannot be revised, modified or reversed in this proceeding, much less in a collateral proceeding.
2. PRESUMPTIONS; CONCLUSIVE PRESUMPTION; JUDGMENT, PRESUMPTION OF CONCLUSIVENESS OF; CASE AT BAR.—The judgment or order of a court is presumed to be conclusive when declared by the rules to be conclusive (sec. 68(d), Rule 123). The legal qualification as a voter, referring, as it does, to "the personal, political or legal condition or relation" of the respondent, the judgment regarding same is conclusive (sec. 44(*a*), Rule 39). Respondent, however, argues that there being no sameness of thing, title and capacity in the present case and in civil case No. 3984, there could be no *res judicata*. It is only "in other cases" than those specified in paragraph (*a*) of sec. 44 of Rule 39, that the sameness of thing, title and capacity are required for judgments to be conclusive. This sameness of thing, title and capacity does not refer to the personal, political or legal condition or relation of the respondent.
3. ELECTION LAW; INELIGIBILITY OF CANDIDATE; EFFECT, WHEN MAJORITY OF ELECTORS VOTE FOR AN INELIGIBLE CANDIDATE; WEIGHT OF AUTHORITY; CASE AT BAR.—While there are American and English decisions holding the view that "if ineligibility is *notorious*, so that the elector must be deemed to have voted with the full knowledge of it, the votes for an ineligible candidate must be declared void, and the next highest candidate is chosen" (King *vs.* Hawkins, 10 East 211), the great weight of authority in American holds that where the majority of the electors vote for an ineligible candidate, they do not thereby throw away their votes, and the eligible candidate who receives the next highest number of votes, being less than a majority, is not entitled to the office. (Sheridan *vs.* City of St. Louis, 81 S. W. Rep. 1082, 1086; McCrary, Elec. (4th Ed.), par. 330.) To declare a candidate for an elective office who has received but a few votes, elected, on the ground that his rival candidate who received about twice as much was disqualified, would not accomplish the will of the electors. The object of an election is to ascertain the choice of the majority. The petitioner obtained only 782 votes, which was a poor second to the 1,145 votes of the respondent. It would be unjust to transfer the palm of victory from an ineligible candidate to any other candidate, who did not receive the popular verdict. To do so would be undemocratic.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Manuel A. Concordia and *Sotto & Sotto* for petitioner and appellant.

Amado G. Salazar for respondent and appellant.

* See decision of the Supreme Court G. R. No. L-2452 dated August 30, 1949. Appeal is affirmed. No costs.

PAREDES, *J.:*

In the elections held on November 11, 1946, in the municipality of Lumban, Province of Laguna, for the office of mayor, the petitioner Lorenzo Llamoso obtained 782 votes; Tomas Barreto, 334 votes; and the respondent Vicente Ferrer, 1,145 votes, or a plurality of 363 votes over the petitioner. The respondent was proclaimed mayor-elect of Lumban by the Municipal Board of Canvassers. The petitioner filed this action for *quo warranto* against the respondent in the Court of First Instance of the province which, after due hearing, declared "that the respondent does not have the required legal requisites necessary to be validly elected to the office of mayor of Lumban. Consequently, his election to said position is hereby held to be unlawful and quashed, and in consequence he has no right to take position (possession) of said office and said position, therefore, for all intents and purposes, is declared vacant. With costs against the respondent." Both parties appealed. Petitioner appealed from so much of the decison as holding that the position of mayor of Lumban was declared vacant. He claims that the respondent having been disqualified by the Court of First Instance and by the Supreme Court to vote and he voted for in Lumban, due to lack of legal residence, all votes cast in respondent's favor which resulted in his obtaining the majority votes, should be adjudged stray and invalid, and petitioner having received the second highest number of votes cast, should be declared elected. Petitioner's discussion of his two assignments of error tended to demonstrate this contention. The appeal of the respondent is interposed from that part of the decision holding his election to said office to be invalid and declaring it vacant. He assigns five errors which will be taken up in the consideration of the factual and legal points raised.

On October 24, 1947, the petitioner Lorenzo Llamoso filed with the Justice of the Peace Court of Santa Cruz, Laguna, a petition for the exclusion of the respondent Vicente Ferrer from the registry list of voters of precinct No. 6 of the municipality of Lumban, for alleged lack of six months' residence in the said municipality, as required by section 98 of Republic Act No. 180 (Revised Election Code). The justice of the peace denied the petition, and petitioner appealed to the Court of First Instance of Laguna where the appeal was docketed as civil case No. 3984, entitled "Lorenzo Llamoso *vs.* Board of Inspectors of Lumban, etc." After hearing, the court rendered on November 4, 1947, a decision reversing the judgment of the justice of the peace and ordering the exclusion of the respondent Vicente Ferrer from the registry list of voters of said precinct No. 6. The respondent brought the case to the Supreme Court on certiorari (G. R. No. L–1784), but the high court was able to dispose of

the petition only on November 13, 1947, or two days after the election. In its resolution dismissing the petition for certiorari, the high court said that the petition had no merit and the question therein involved had already become moot. On November 10, 1947, during the pendency of the certiorari proceedings, the petitioner requested the assistant provincial fiscal of Laguna for an opinion as to whether or not respondent could be a candidate for mayor of Lumbán, notwithstanding the decision in civil case No. 3984, ordering his exclusion from the registry list of voters of precinct No. 6. In a written opinion rendered on the same date, the fiscal stated that the respondent was disqualified (Exhibit X). Upon request of the respondent, the same fiscal declared on the same date, that "this involves very grave and important rights, it is the opinion of this office that in the meantime that no definite ruling is promulgated by the Supreme Court all votes that may be cast in your favor should be considered and counted for what they will be worth afterwards." (Exhibit Y.) Exhibit Y was accompanied with a letter of the fiscal addressed to the petitioner who was then the incumbent mayor of Lumban, inviting his attention that said Exhibit Y amended in a way the first opinion and that he should be guided accordingly. Then came the elections, as heretofore stated.

In the hearing of this case, the parties stipulated on some facts. The petitioner testified on his own behalf and presented Santiago Cacalda and Exhibit A, decision in case No. 3984 as part of stipulation 5, Exhibit X, Y, Y–1, Z and Z–1, which were all admitted without objection. The respondent did not adduce oral evidence; he simply offered the whole record of the case No. 3984, including the transcript thereof as Exhibit 1, and Exhibits 2, 2–A, 3, 3–A, and 4, which were all rejected by the court, but which were permitted to remain in the record, upon request of the respondent's counsel. The trial judge ruled that, according to section 68 and paragraph (*a*) of section 44, of Rule 123, the judgment in case No. 3984 was conclusive and could not be attacked collaterally. Santiago Cacalda and the petitioner testified that after the rendition of the decision in case No. 3984 on November 4, 1947, copies thereof were distributed to the electorate of Lumban and mention was made in public meetings, of the court's decision that the respondent was disqualified to vote and to be voted upon, and to elect him as may or would be a mere waste of votes.

The following seem to be the fundamental questions to be resolved in connection with this appeal:

1. Can the respondent be voted for as mayor of Lumban, after he had been disqualified and excluded as an elector of precinct No. 6, by virtue of the court's decision in Case No. 3984?;

2. Did that decision conclude the respondent in the present proceedings, with respect to the latter's legal qualification to be elected as mayor?;

3. In the event that the respondent's election is annulled, can the petitioner who possessed the legal qualifications as a candidate and obtained the second highest number of votes, be declared elected?

The trial court held that the respondent was not a qualified person to be voted upon, consequently, his votes should not be counted and he should not be proclaimed elected. To be eligible for the office of mayor, the law requires, not only one year residence, but also the fact of being a qualified elector in his municipality. The pertinent provisions of Section 2174 of the Revised Administrative Code, states:

"An elective municipal official must, at the time of the election, be a *qualified voter* in his municipality and must have been a resident therein for at least one year. * * *."

The inquiry, therefore, should be confined to the question as to whether the respondent was a qualified voter in said municipality on the said election day. That he was not a qualified voter, for which reason he was excluded from the list of voters had been determined by the court in the said civil case No. 3984, and said decision was final. (Sec. 104, Republic Act No. 180.) That decision cannot be revised, modified or reversed in this proceeding, much less in a collateral proceeding. In this appeal, the question of respondent's one year residence is only of secondary importance, because the decision of the court below was based, not upon the lack of the required legal residence of one year, but on the fact that he was not a *qualified elector* of that municipality.

Granting, for the purposes of argument, that the respondent's legal residence of one year is in issue, it is, however, clearly logical that if he did not have the six months' residence to be a qualified elector, he did not also possess the required legal residence of one year for a candidate. "That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." If the respondent lacks the six months' residence requirement for a voter, he must necessarily lack the legal residence of twelve months to be eligible as mayor, because the question of residence was actually considered and necessarily included in the judgment in civil case No. 3984.

The judgment or order of a court is presumed to be conclusive when declared by the Rules to be conclusive. (Sec. 68 (*d*), Rule 123.) The Rule provides:

"(*a*) * * * in respect to the *personal, political, or legal condition or relation* of a particular person, *the judgment or order is conclusive* upon * * * the condition or relation of the person; * * *

"(*b*) *In other cases* the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for *the same thing and under the same title and in the same capacity.*" (Sec. 44, Rule 39, Rules of Court. (Italics supplied.)

The legal qualification as a voter, referring, as it does, to "the personal, political or legal condition or relation" of the respondent, the judgment regarding the same is conclusive. Respondent, however, argues at length that there being no sameness of thing, title and capacity in the present case and in civil case No. 3984, there could not be *res judicata.* We feel, however, that it is only "in other cases" than those specified in paragraph (*a*) of the Rule just quoted, that the sameness of thing, title and capacity are required for judgments to be conclusive. This sameness of thing, title and capacity does not refer to the personal, political, or legal condition or relation of the Respondent. A careful perusal of the pleadings and the decision of the trial court on this proceeding, will readily disclose that the court and parties were laboring under a theory different from that followed in the case of Nuval *vs.* Guray, 52 Phil., 645, cited by the respondent. The present case in viewed from an angle not raised at all in the Nuval case; it is decided on the theory of conclusiveness based on paragraph (*a*) of the rule cited, and not on paragraph (*b*) on *res judicata.*

Petitioner submits that it was an error for the lower court to declare the office of the mayor of Lumban vacant, instead of considering the votes cast for respondent as stray and invalid and proclaiming him elected. Evidence was adduced by the petitioner to the effect that the electorate of Lumban had been informed of respondent's ineligibility. From this, the petitioner concluded that as the people willingly wasted their votes, he should have been elected mayor. In support of this conclusion, respondent cited a ruling that "if ineligibility is *notorious,* so that the electors must be deemed to have voted with the full knowledge of it, the votes for an ineligible candidate must be declared void, and the next highest candidate is chosen." (King *vs.* Hawkins, 10 East 211, and other American cases mentioned in Petitioner's Brief, p. 7.) This is also the English doctrine. We find, however, that the alleged notoriety of respondent's ineligibility, granting, for the purposes of discussion, that the decision on the respondent's exclusion as voter in civil case No. 3984, promulgated on November 4, 1947, was fully brought to the attention of the voting public, was destroyed or neutralized, at least, by the amendatory opinion of the fiscal rendered on November 10, 1947, that "all the votes that may be cast in favor of the respondent should be considered and counted for what they will be worth after-

wards." Moreover, the petitioner himself admits the abundance of decisions which uphold the contrary view. In fact, the great weight of authority in America holds that where the majority of the electors vote for an ineligible candidate, they do not thereby throw away their votes, and the eligible candidate who receives the next highest number of votes, being less than a majority, is not entitled to the office, (Sheridan *vs.* City of St. Louis, 81 S. W. Rep., 1082, 1086.) Judge McCrary, in giving the reason for this opinion, says: "Any doctrine which opens the way for minority rule in any case is anti-republican and anti-American." (McCrary, Elect. [4th Ed.], par. 330.) To declare a candidate for an elective office who has received but a few votes, elected, on the ground that his rival candidate who received about twice as much was disqualified, would not accomplish the will of the electors. The object of an election is to ascertain the choice of the majority. The petitioner obtained only 782 votes, which was a poor second to the 1,145 votes of the respondent. We do not feel justified in transferring the palm of victory from an ineligible candidate to any other candidate, who did not receive the popular verdict. To do so would be undemocratic.

In view of the theory upon which the court below based its decision, which we find to be correct, the rejection of the exhibits and testimonies of witnesses in case No. 3984 offered by the respondent, was proper. If the decision Exhibit A in said case was admitted, it was merely to show the fact that the respondent did not have the qualification to vote at the elections held on November 11, 1947, in Lumban, Laguna, and could not, therefore, be voted upon.

The judgment appealed from is hereby affirmed. So ordered.

Labrador and *Abad Santos, JJ.*, concur.

Judgment affirmed.

[No. 1515–R. July 27, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* HOSPICIO PROVIDO and GRACIANO PEDROSO, defendants. HOSPICIO PROVIDO, appellant.

EVIDENCE; TESTIMONY OF WITNESSES; RULE "FALSUS IN UNO FALSUS IN OMNIBUS" (NOT MANDATORY RULE OF EVIDENCE) CONSTRUED AND APPLIED.—The legal principle "*falsus in uno, falsus in omnibus*" invoked in the instant case is not applicable because the testimony as to the identity of the herein appellant as one of the culprits was corroborated by another witness. The aforesaid rule, as construed and applied, is that where a witness has willfully falsified the truth on one point, his testimony on other points may be disregarded unless corroborated by circumstances or other evidence. Moreover, the

maxim is rarely applied, for it is not mandatory rule of evidence. The court may accept such of the witness' testimony as it may deem proper notwithstanding his false statements. If part of a witness' testimony is found true, it cannot be disregarded entirely. (70 C. J., 783–5; III Wharton's Criminal Evidence, 11th Ed., p. 2332.)

APPEAL from a judgment of the Court of First Instance of Iloilo. Imperial Reyes, J.

The facts are stated in the opinion of the court.

Carlos M. Velayo for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Umali* for appellee.

GUTIERREZ DAVID, *J.:*

This is an appeal by defendant Hospicio Provido from the decision of the Court of First Instance of Iloilo finding him guilty of robbery in band, mitigated by voluntary surrender, and sentencing him to an indeterminate penalty of from 2 years, 4 months and 1 day of *prisión corrcccional* to 8 years and 1 day of *prisión mayor,* with indemnity and accessories of law, and one-half of the costs.

Hospicio Provido and Graciano Pedroso, together with Antonio Cabayao, John Doe, Ricard Doe, Peter Doe, Jack Doe and Mark Doe, who are still at large, were charged with robbery in band with rape. After trial, the court acquitted Pedroso and found Provido guilty of robbery in band with the aforementioned mitigating circumstance.

It appears that about 7 o'clock in the evening of November 20, 1946, in barrio Bogtongan, municipality of Dueñas, Iloilo, appellant with one Antonio Cabayao, both armed with revolvers, entered the house of Isabel Pacio through the kitchen door. Finding Isabel, her brother Leon Pacio, and one Quintin Pedimente in the kitchen, Cabayao told them not to move lest they be killed and ordered Leon, at the point of a gun, to sit near Isabel and to indicate where their money was. As Leon answered that they had none, Cabayao became infuriated and gave him a fist blow, causing him to fall down. Then, Cabayao noticed a hanging bundle on a post, picked it up and took therefrom ₱9 in genuine money and ₱40 in emergency notes, all of which belonged to Isabel. Facing Isabel, Cabayao asked her where the rest of their money was, to which she replied that they did not have any more inasmuch as he (Cabayao) had taken all their money which he found in the bundle. Turning to Leon, Cabayao with a kick on the former's breast demanded for more money. In view of Cabayao's attitude, Isabel, for fear, revealed that she had ₱30 more in the first floor or "entresuelo" of the house. Cabayao instructed her to get it and followed her to the "entresuelo." Meanwhile, the herein appellant, pistol in hand, guarded the door of the kitchen. Upon en-

tering the "entresuelo," Isabel took ₱30 from a cardboard box in the "entresuelo." Cabayao got hold of the box, examined it, and took therefrom ₱10 more, after which he and Isabel went back to the kitchen. Again in the kitchen, Cabayao inquired from Leon what food they had for the night, and upon being informed that there was meat, he and the appellant ate the same. Then, Cabayao again asked Leon for more money. Leon replied that there was the amount of ₱0.08 in the pocket of his pants which was hanging in the main part of the house. Cabayao look for the pants and took therefrom the eight centavos and a bottle of perfume worth ₱2.50. Then, Cabayao ordered the appellant to take the clothes from the ground floor and followed him. Cabayao upon returning immediately to the kitchen and seeing Leon in a soldier's uniform, inquired for the latter's pistol. Leon replied that he had none because he was then only a volunteer guard. Thereafter, the felons left the place, cautioning Leon not to tell anyone about the incident.

On the following morning, upon checking the things that the culprits have taken away, Isabel found that a west point coat and a silk cloth valued at ₱10 and ₱7.50, respectively, were missing from the ground floor of the house. She found a handkerchief (Exhibit A), containing the following dedication: "To my love Pecio, Remembrance. From C. P. Heartily given to Hospicio Provido."

The testimony of Isabel Pacio as to the alleged rape and the identity of defendant Pedroso was disregarded by the trial court on the ground that it was not duly corroborated.

Appellant denied any participation in the commission of the crime and set up a defense of *alibi*. He testified that in the morning of November 20, 1946, he accompanied his aunt, Antonina Andula, and Segundina Cordero to the latter's coconut plantation situated in barrio Bongloy, municipality of Dingle, Iloilo, which was 15 kilometers from Bogtongan. They stayed in said barrio up to about 6 o'clock in the afternoon of the same day, at which time they returned to Pototan, where appellant had his residence in the house of Segundina Cordero and where he stayed the whole night. Andula and Cordero corroborated him.

In this instance, appellant contends that the trial court erred (1) in giving credit to the evidence of the prosecution; (2) in not having applied the doctrine of *falsus in uno falsus in omnibus* upon weighing the credibility of the prosecution witnesses; and (3) in not giving credit to appellant's evidence and defense.

It is not disputed that on the night in question a group of more than three armed malefactors repaired to the house where Isabel Pacio and her brother Leon lived in barrio Bongtongan, Dueñas, Iloilo—some of them went in

and others remained outside—and with the use of force and intimidation succeeded in asporting the alleged stolen things. The question raised is whether there was sufficient evidence in the record to link the appellant with the commission of said robbery as to justify a verdict of conviction against him.

The identification of appellant as one of the robbers made by Isabel Pacio and Leon Pacio is assailed on the ground that although said Isabel and Leon knew the appellant before the date of the robbery, they however informed the policemen, upon being investigated a few days after the occurrence, that the malefactors were unknown to them. This contention is based on the testimony of defense witness Ignacio Pedroso who testified that, in his presence, Isabel and Leon told the policemen who went with him to investigate the case that they did not recognize the culprits. But the trial court correctly disregarded the testimony of Ignacio. He was naturally a biased witness due to his relationship with the defendant Pedroso and appellant herein. The former is his own nephew and the latter his wife's nephew. Moreover, Ignacio's testimony was denied by Isabel, who even stated that on the day following the incident she informed the mayor of the names of the malefactors who were known to her. Cristino Vallejo, the leader of the police squad which investigated Isabel, testified that Ignacio Graciano was not with them (the policemen) when they went to the house of the offended parties. He further branded as false the assertion of Ignacio to the effect that Isabel and Leon did not mention the names of the robbers in the affidavits they signed.

It is claimed by the appellant that the original affidavits executed by Isabel and Leon were suppressed and substituted by the affidavits marked Exhibits 1 and 2 for the defense. It is argued that such substitution was done for the reason that neither the appellant nor Graciano Pedroso was ever complicated in said original affidavits. We find no merit in this contention. The chief of police, Vicente Carnazo, explained that he reduced the handwritten original affidavits of Isabel and Leon into typewritten form to make them more acceptable in court. Said chief of police also satisfactorily explained that the non-production of said original affidavits, executed by the offended parties, was due to the misplacement of the same inasmuch as he considered them useless once they were rewritten in typewritten form, duly signed and sworn to before the justice of the peace.

It is urged that since the trial court did not believe the testimony of Isabel Pacio as far as the identity of Graciano Pedroso is concerned, her testimony against appellant should also be disregarded pursuant to the rule of *"falsus*

in uno, falsus in omnibus." On this point, we observe that the trial court acquitted Graciano not because it found Isabel's testimony against him to be untrue but because her testimony was not corroborated. The legal principle invoked is not applicable because the testimony of Isabel as to the identity of the herein appellant as one of the culprits was corroborated by that of Leon. The aforesaid rule, as construed and applied, is that where a witness has willfully falsified the truth on one point, his testimony on other points may be disregarded unless corroborated by circumstances or other evidence. Moreover, the maxim is rarely applied, for it is not a mandatory rule of evidence. The court may accept such of the witness' testimony as it may deem proper notwithstanding his false statements. If part of a witness' testimony is found true, it cannot be disregarded entirely (70 C. J., 783–5; III Wharton's Criminal Evidence, 11th Ed. p. 2332).

In the absence of any showing that Isabel and Leon were prompted by some evil motive to falsely implicate the herein appellant, we believe that the former's testimony should be given credit. Furthermore, it is corroborated by the fact that a handkerchief, Exhibit A, belonging to the appellant was found in the premises the next morning. The contention that said hankerchief was a planted evidence is untenable. It is incredible that the offended parties who did not have an axe to grind with the appellant would go to the extent of, or would take pains in, embroidering carefully a dedication to the appellant and the latter's name in said handkerchief. The trial court which had the chance to gauge the credibility of said witnesses gave them full credence and we find no reason to disturb its findings. Hence, it is our opinion that appellant's oral defense of *alibi*—which is a common defense and of easy concoction between relatives and friends—cannot prevail over the positive testimony of Isabel and Leon whereby the identity of the appellant as one of the malefactors was clearly and inequivocably established.

In view of the foregoing, we believe that the guilt of the appellant has been proved beyond cavil.

The offense committed is robbery in band penalized in case No. 5 of article 294, in relation to article 295, of the Revised Penal Code, as amended, respectively, by article 6 of the Republic Act No. 18 and article 2 of the Republic Act No. 12. The penalty prescribed therefor is *prisión correccional* in its maximum period to *prisión mayor* in its medium period to be imposed in its maximum degree, or from 8 years and 1 day to 10 years. Taking into consideration the attendance of the aggravating circumstances of nocturnity and dwelling—which we hold were present in the commission of the crime—with only one mitigating circumstance to offset either of them, namely, the voluntary

surrender, the penalty prescribed should be imposed in its maximum period, or from 9 years, 4 months and 1 day to 10 years. Applying the Indeterminate Sentence Law, appellant, as a mere member of the band, should be, as he is, hereby sentenced to an indeterminate penalty of not less than 6 years and 1 day (the minimum degree of *prisión mayor* in its minimum period) nor more than 9 years, 4 months and 1 day of *prisión mayor*.

With the above indicated modification, the decision appealed from is hereby affirmed in all other respects, with costs against the appellant.

Reyes and *Dizon, JJ.*, concur.

Judgment modified.

[No. 2120–R. August 4, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIO NOVENO and PRIMITIVO SANGIL, defendant, PRIMITIVO SANGIL, defendant and appellant.

1. CRIMINAL LAW; ESTAFA; THEFT AND ESTAFA, DISTINGUISHED; CASE AT BAR.—The first element of the crime of theft is not merely *asportation*, but the taking of the thing that is carried away without the owner's consent. When personal property is *not taken* but *received*, and then appropriated to one's use against the will of its owner, the crime of theft is not produced. It may be another offense, *estafa*, for instance, in which the *asporation* occurs after the thing has been *received* by the offender instead of taken by him. In the case at bar, pursuant to their agreement the offended party *delivered* not only the material but also the juridical possession of his truck to both defendants. As correctly pointed out by the Solicitor General, "during the period agreed upon in the contract for hire, that is to say, as long as the juridical relation existing between the parties continued, (or in other words from the time the defendants received the truck—6 o'clock in the morning—until noon of that day), accused could set up his possession as against the right to possession of the owner." For this reason the appellant's failure to return the truck at the time stipulated and the appropriation of the property that he was under the obligation to return to the offended party, constitutes the *crime of éstafa*. (See U.S. *vs.* Abad, 23 Phil., 504; U.S. *vs.* Ador Dionisio, 35 Phil., 141).

2. CRIMINAL PROCEDURE; INFORMATION; VARIANCE BETWEEN ALLEGATION AND PROOF; MISTAKE IN CHARGING PROPER OFFENSE; DUTY OF THE COURT.—Since the object of the crime was taken with the consent of the owner, the accused cannot be convicted of *estafa* where the information (as in the instant case) alleges that he took the thing without the owner's consent. (Sections 4 and 5, Rule 116, Rules of Court; U.S. *vs.* Abad, 23 Phil., 504; People *vs.* Benitez et al., C.A.—G.R. No. 66–R, Jan. 22, 1947; People *vs.* Yusay, 50 Phil., 598.) Accused is, therefore, acquitted of the charge of theft. However, and pursuant to the findings herein set forth and the rules on criminal procedure, the Prosecuting Attorney for the City of Manila shall file another information against appellant and all other persons that might have intervened in the commission of the

offense involved in this case. Appellant shall not be discharged so that he may be made to answer to the proper offense (People *vs.* De la Cruz, 59 Phil., 529). No disposition is made with regard to the truck in question because the same was not placed in *custodia legis* nor subject to determinate by this Court.

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the Court.

Macario S. Calayac for appellant.

Assistant Solicitor-General Rosal and *Solicitor Feria* for appellee.

FELIX, *J.:*

At about 6 o'clock in the morning of August 10, 1946, Primitivo Sangil and Antonio Noveno, a former driver of Bernardo Mijares, went to the house of the latter at San Andres Street, in this City of Manila for the purpose of hiring his truck. It was agreed that upon receipt of the amount of ₱10, Mijares would let Noveno drive his truck hired by Sangil until noon of that day. Sangil then paid said sum of ₱10 and Noveno and Sangil drove the truck (motor No. T–214130679; Certificate of Registration No. T–15443—Exhibits A and B) away. None of them, however, returned the truck at the time stipulated, whereupon a search was conducted for the missing truck which was subsequently found in Gubat, Sorsogon, in the possession of and operated by Eusebio Escalante who claimed to be its owner for having purchased the same.

Because of these facts on August 31, 1946, an information was filed in the Court of First Instance of Manila charging Antonio Noveno and Primitivo Sangil with the crime of qualified theft of a truck, valued at ₱2,300, the property of said Bernardo Mijares. As Antonio Noveno could not be arrested, the case was prosecuted only with regard to Primitivo Sangil, and after hearing the court found him guilty of theft, and sentenced him to suffer an indeterminate penalty of from four (4) months and one (1) day to two (2) years, eleven (11) months and ten (10) days, to indemnify the offended party in the sum of ₱2,300, to suffer the corresponding subsidiary imprisonment in case of insolvency and to pay one-half of the costs. Against this decision, Primitivo Sangil appealed to Us, and in this instance his counsel attributes to the trial judge the commission of various alleged errors predicated on the insufficiency of the evidence on record to establish appellant's guilt beyond reasonable doubt.

It was shown at the hearing that "before August 10, 1946, Sangil and Noveno knew each other very well as the latter hails from the same town of the former's wife. In that month Sangil was residing in the hometown of his

wife in Albay, where he had a small store. On or about the above stated date, he came to Manila to visit his relatives and stopped in the house of his brother-in-law, Attorney Bo, one of his lawyers. It does not appear from the record how Antonio Noveno learned that Saugil was in Manila, but according to appellant on August 10, 1946, Noveno went to his place and asked him if he wanted to hire the truck of Bernardo Mijares, and as he did, they repaired to the residence of the offended party. The evidence does not leave room for doubt that both appellant and Noveno acted in conspiracy and helped each other to get hold of Mijares' truck. The facts proven in the case are as related at the commencement of this decision, and it seems apparent that appellant is criminally liable for his participation in the crooked and fraudelent transaction by which defendants dispossessed Mijares of his truck.

Although the alleged errors attributed by defense counsel to the lower court are untenable, the Solicitor General maintains in appellee's brief that the crime committed in the case at bar is not theft but *estafa*. He argues that "it has been well said that the distinction between the crimes of theft and *estafa* lies in the fact that in the former only the material or physical possession of the thing is transferred, whereas in the latter, both the material and the the juridical possession thereof are conveyed."

The first element of the crime of theft is not merely *aspotatio*, but the taking of the thing that is carried away without the owner's consent. When personal property is *not taken* but *received*, and then appropriated to one's use against the will of its owner, the crime of theft is not produced. It may be another offense, *estafa*, for instance, in which the *aspotatio* occurs after the thing has been *received* by the offender instead of taken by him. In the case at bar, pursuant to their agreement Bernardo Mijares *delivered* not only the material but also the juridical possession of his truck to both defendants. As correctly pointed out by the Solicitor General, "during the period agreed upon in the contract for hire, that is to say, as long as the juridical relation existing between the parties continued, (or in other words from the time the defendants received the truck—6 o'clock in the morning—until noon of that day), appellant could set up his possession as against the right to possession of the owner." For this reason we concur with the Solicitor General in his opinion that appellant's failure to return the truck at the time stipulated and the appropriation of the property that he was under the obligation to return to the offended party, constitutes the crime of *estafa*. In two similar cases, concerning the failure of the offender to return a bicycle *which he had rented* the Supreme Court held that the

crime committed was *estafa*. (U. S. *vs.* Abad, 23 Phil., 504; U. S. *vs.* Ador Dionisio, 35 Phil., 141).

Sections 4 and 5, Rule 116, of the Rules of Court, provide:

"SEC. 4. *Judgment in case of variance between allegation and proof.*—When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

"SEC. 5. *When an offense includes or is included in another.*—An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And the offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter."

In the case of U. S. *vs.* Abad (23 Phil., 504), it was held that

"In no case can a conviction be sustained * * * for a different offense (than that charged in the information), unless it is necessarily included in the offense charged, a general rule which has its foundation in the constitutional right of the accused to be advised at the outset of the proceedings as to the precise nature of the charge against him."

Even a cursory consideration of the respective constituent elements of the crimes of *estafa* and theft will show that the former's element of *receiving* the thing is not included but different and rather incompatible with the latter's element of *taking* personal property.

In an analogous case (People *vs.* Benitez et al., C.A.—G. R. No. 66-R, January 22, 1947) this Court held that since the object of the crime was taken with the consent of the owner, the accused could not be convicted of *estafa* where the information (as in the instant case) alleges that he took the thing without the owner's consent. (See also People *vs.* Yusay, 50 Phil., 598).

Now, Section 12, Rule 115, of the Rules of Court, provides:

"SEC. 12. *When mistake has been made in charging the proper offense.*—When it appears at any time after trial has begun and before judgment is taken, that a mistake has been made in charging the proper offense, and the defendant cannot be convicted of the offense charged, nor of any other offense necessarily included therein, the defendant must not be discharged, if there appears to be a good cause to detain him in custody, but the court must commit him to answer to the proper offense, and may also require the witness to give bail for their appearance at the trial."

Wherefore, the decision appealed from is hereby reversed and the accused acquitted of the charge, which is hereby dismissed with costs *de oficio*. However, and pursuant to the findings herein set forth and the rules on criminal

procedure, the prosecuting attorney for the City of Manila shall file another information against appellant and all other persons that might have intervened in the commission of the offense involved in this case. Appellant shall not be discharged so that he may be made to answer to the proper offense (People *vs.* de la Cruz, 59 Phil., 529). No disposition is made with regard to the truck in question because the same was not placed in *custodia legis* nor subject to determination by this Court. It is so ordered.

Torres and *Endencia, JJ.*, concur.

Decision reversed.

[No. 1224–R. Agosto 6, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* LORENZO MINTU, acusado y apelante

1. DERECHO PENAL; POSESIÓN ILEGAL DE ARMA DE FUEGO; RIFLE SIN GATILLO NI CULATA ES "RIFLE COMPLETO."—El acusado contiende que él no debe ser condenado por posesión ilegal de un rifle sino sólo por posesión ilegal de partes de un rifle, alegando que el Exhíbit A no tiene gatillo ni culata y, por consiguiente, no se le puede considerar como un rifle completo que justifique la imposición de cinco años de prisión. Aparece, sin embargo, que el artículo 877 del Código Administrativo Revisado provee lo siguiente: "The barrel of any firearm shall be considered a complete firearm for all purposes hereof." Y ante esta definición legal de un rifle completo para los efectos de la imposición de la pena a los poseedores de armas de fuego sin licencia, huelga discutir si el rifle en cuestión es o no completo.
2. ID.; ID.; ID.; PENA; LEY DE SENTENCIA INDETERMINADA APLICABLE AL CASO DE AUTOS.—La pena impuesta al acusado es la de cinco años de prisión. Creemos, sin embargo, que aún tratándose de esta clase de delitos las disposiciones de la Ley de Sentencia Indeterminada son aplicables, y, consiguiente, la pena que se debe imponer al acusado, dadas las circunstancias del caso, es la de cinco a seis años de prisión.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Cavite. Alfonso, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Simeon M. Gregorio en representación del apelante.

El Procurador General Auxiliar Sr. Capunan, Jr. y el *Procurador Sr. Umali en representación del apelado.*

ENDENCIA, *M.:*

Trátase de una apelación contra una sentencia del Juzgado de Primera Instancia de Cavite en la que, de conformidad con las disposiciones del artículo 2692 del Código Administrativo Revisado, tal como ha sido enmendado por la Ley No. 56 de La Mancomunidad y la Ley No. 4 de la República el apelante Lorenzo Mintu fué condenado por posesión ilegal de arma de fuego a sufrir prisión de cinco años y a pagar las costas del juicio. No estando conforme con la referida

sentencia, el procesado perfeccionó su apelación y en esta instancia alega que el Juzgado inferior erró:

"1. Al dar crédito a los testigos de la acusación que declararon que el apelante admitió haber poseido el rifle Exhíbit A como guerrillero y que le guardó consigo sin la licencia correspondiente;

"2. Al no dar paso a los declaraciones del apelante y sus testigos al efecto de que aquél encontró en un bosque el referido rifle y que después lo presentó a las autoridades correspondientes;

"3. Al hacer conclusiones sobre la posibilidad de que el acusado haya usado el referido rifle para robar a la gente; y

"4. Al considerar el referido Exhibit A como un rifle completo en virtud de las disposiciones del artículo 2692 del Código Administrativo Revisado tal como quedó enmendado por la Ley No. 56 de la Mancomunidad y la Ley No. 4 de la República y, consiguientemente, al condenarle a sufrir prisión de cinco años."

Consta de las pruebas que en el mes de septiembre de 1946, estando detenido en el municipio de Tanza, Cavite, y sujeto a una investigación con motivo de un robo cometido en la casa de un tal Andres Zabala, del citado municipio, el apelante llegó a declarar ante el Jefe de Policía Eliseo Ernesto que él tenía en su casa un arma de fuego rota, por lo que dicho Jefe de Policía ordenó a su Sargento Valeriano Araga y al padre del acusado que fueran a la casa de éste para recogerla. Aquellos obedecieron la orden, fueron a la case del apelante, y, al llegar serca de ella, Valeriano Araga se quedó en el camino mientras que el padre del apelante entró en la casa, de la que después de un rato salió llevando ya consigo el rifle Exhíbit A, que entregó al Sargento Araga diciéndole: "Este es el rifle de mi hijo." El Sargento Araga llevó después esa arma a la población y la entregó al Jefe de Policía, que volvió a preguntar al apelante si la misma era suya. El apelante entonces admitió que lo era y que no tenía licencia para poseerla. Asímismo consta de las pruebas que cuando se investigaba el asunto de robo antes mencionado ante el Juez de Paz de Tanza Julio F. Abad, el apelante contestó a dicho funcionario que el arma de referencia era suya, que la poseía desde que era miembro de las guerrillas y que nunca ha tenido licencia para poseerla.

Los hechos arriba mencionados se han probado suficientemente por las declaraciones de los testigos de la acusación que son funcionarios públicos y de cuya veracidad la causa no suministra ningún dato para que se dude.

El apelante no discute el hecho de haber tenido en su poder y a su disposición el rifle Exhíbit A, pero alega que lo encontró en el mes de mayo de 1946 en un bosque; que por espacio de un mes lo guardó en su casa, y como después oyera que el gobierno ordenaba que se rindiesen armas de fuego, lo presentó al entonces Jefe de Policía de Tanza, Lazaro Paragua, pero que éste, al ver que el arma estaba rota, le dijo lo siguiente: "No es ese lo que se debe presentar, ese (rifle) está roto"; que a consecuencia de esta manifes-

tación del Jefe Paragua y porque éste también le aconsejara que lo enterrase porque era inútil, el apelante lo enterró cerca de su casa. Lazaro Paragua declaró por la defensa y trató de correborar la declaración del apelante acerca de la presentación del rifle en cuestión y de su consejo al apelante para que lo enterrara por ser inútil. Con esto, el apelante pretende que él debe ser absuelto de la infracción de ley que se le imputa. Mas, a la vista de las alegaciones del apelante y admitiendo que las mismas fueran verdaderas, cabría eximirse al apelante de la responsabilidad criminal por la posesión ilegal del arma de fuego en cuestión? Creemos que la negativa se impone. Y esto es así, porque los mismos hechos declarados por el acusado indican claramente que él tuvo en su poder y bajo su control el rifle antes de que fuera sacado por su padre en compañía de Valeriano Araga del lugar donde estaba enterrado, y si bien lo había enterrado en cierta parte de su casa, de hecho el apelante no dejó de poseerlo ni de tenerlo a su disposición, y podría sacarlo en cualquier momento del sitio en que estaba enterrado, y usarlo si así la plugiese.

Por otro lado, la pretensión del apelante de que Lazaro Paragua rechazó el rifle en cuestión cuando se le presentó porque no tenía gatillo ni culata y era incompleto, no merece consideración, pues de ser cierta la alegada presentación del rifle, el citado Paragua lo hubiese con seguridad aceptado y confiscado, como era su deber. Además, las pruebas decuestran que el apelante, al ser investigado por Eliseo Ernesto, negó tener en su posesión arma alguna de fuego y no hizo mención de que hubiera presentado el Exhíbit A al ex-jefe de policía Paragua, lo cual no se ajusta a su declaración en corte abierta de que la tenía por haberla hallado en el bosque y que la quise presentar al Jefe de Policía Paragua pero que éste no la recibió aconsejándole en su lugar que la enterrara por inútil.

En cuanto a la otra pretensión del apelante de que encontró dicho rifle el mes de mayo de 1946 en un bosque, la misma resulta más increible, si se tiene en cuenta que el apelante no dijo nada de esto al Jefe de Policía cuando éste le investigaba con motivo del robo en la casa de Andres Zabala, y sobre todo, porque el referido apelante declaró ante el Juez de Paz Abad de que tenía dicho rifle desde que era guerrillero y lo usaba como tal, hecho que refuta de una manera directa el alegado hallazgo del rifle en el mes de mayo. La defensa del acusado resulta, por tanto, indigna de crédito.

Por último, el apelante contiende que él no debe ser condenado por posesión ilegal de un rifle sino sólo por posesión ilegal de partes de un rifle, alegando que el Exhíbit A no tiene gatillo ni culata y por consiguiente, no se lo puede considerar como un rifle completo que justifique la imposición de cinco años de prisión. Aparece, sin embargo, que

el artículo 877 del Código Administrativo Revisado provee lo siguiente:

"The barrel of any firearm shall be considered a complete firearm for all the purposes hereof."

Y ante esta definición legal de un rifle completo para los efectos de la imposición de la pena a los poseedores de armas de fuego sin licencia, huelga discutir si el rifle en cuestión es o no completo.

La pena impuesta al apelatne es la de cinco años de prisión. Creemos, sin embargo, que aún tratándose de esta clase de delitos las disposiciones de la Ley de Sentencia Indeterminada son aplicables, y, consiguientemente, la pena que se debe imponer al acusado, dadas las circumstancias del caso, es la de cinco a seis años de prisión.

Por tanto, previa modificación de la sentencia apelada de conformidad con lo arriba expuesto, la misma queda en todo lo demás confirmada.

Torres y *Felix, MM.*, están conformes.
Se modifica la sentencia.

[No. 830-R. August 10, 1948]

The PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* LUCIANO IDPALINA, defendant and appellant

CRIMINAL PROCEDURE; TRIAL, RIGHT OF ACCUSED TO PREPARE FOR; WAIVER OF RIGHT EXPRESSLY OR BY IMPLICATION; CASE AT BAR.—Although at first the defense properly formulated its demand for postponement, at last, and considering the precarious condition of the witnesses for the prosecution, the matter *was left to the discretion of the court,* which, in conformity with the petitions of the Fiscal and of defense counsel, ordered the case to be heard then (Oct. 22, 1946) for the testimony of the witnesses for the government only, as the hearing was postponed until the next day, for the testimony of the witnesses for the defense. Under the circumstances of record, it would have been better for the court to grant the defendant at least two days to prepare his defense, but as the defendant did not insist on his demand, and even yielded his right to the discretion of the court, he cannot now claim that his right to the two-day period to prepare for trial has been infringed, for that right may be waived either expressly or impliedly. (People *vs.* Miguel Moreno, 43 Order General No. 11, p. 4644—October 28, 1946.) The consent of the accused to an assignment of his case for trial on a certain day will constitute a waiver of that right to a longer time to prepare for trial (8 R. C. L., 67-68).

APPEAL from a judgment of the Court of First Instance of Misamis Oriental. Palacio, J.

The facts are stated in the opinion of the court.

Tañada, Pelaez & Teehankee for appellant.
First Assistant Solicitor-General Gianzon and *Solicitor Luciano* for appellee.

FELIX, *J.:*

Luciano Idpalina was prosecuted in the Court of First Instance of Misamis Oriental accused of the crime of homicide. At the arraignment and immediately after defendant entered the plea of not guilty, the case was called for hearing over the objection of the defendant, who, at first, invoked his right to the two-day period within which to prepare for trial, though finally submitted the question of the postponement of the hearing to the sound discretion of the court.

After proper proceedings the defendant was found guilty of the offense charged and was sentenced to suffer the indeterminate penalty of from eight (8) years and one (1) day of *prisión mayor* as minimum to seventeen (17) years and four (4) months of *reclusión temporal* as maximum, to indemnify the heirs of Irinea Taytay, in the amount of ₱2,000 and to pay the costs. From this decision he appealed to this Court and in this instance his counsel maintains that the trial judge erred: (1) In refusing to grant the accused and his counsel time to prepare for his defense, and in compelling him to go to trial immediately after the arraingment; (2) In giving full credence and weight to the uncorroborated testimony of Candelaria Kirikiri, the only eye-witness of the prosecution, in spite of its being doubtful and full of inexplicable inconsistencies, and in not giving any credence and weight to the testimony of the accused and the eye-witness Ptolomeo Pahigo and the corroborating testimony of Perfecto Bonoluan about the actual facts of the occurrence leading to the death of the accused's wife; (3) In not considering the importance of Exhibit 2 (the first medical certificate of Doctor Baradi) of the defense in connection with Exhibit A (the second medical certificate of Doctor Baradi) and the testimony of Doctor Baradi for the prosecution, and in not finding said evidence inconsitent with the theory of the prosecution as to the cause of the death; and (4) In finding the accused guilty of the crime charged instead of acquitting the accused on the ground of reasonable doubt.

The facts of the case are very simple. Appellant and Irinea Taytay were paramours, living together as husband and wife in the barrio of Baliwagan, Talisayan, Misamis Oriental, for a period of about one year prior to September 17, 1946. As is quite common among lovers, the illicit union between the two was not at all free from quarrels and misunderstandings. After one of these tantrums of the couple, which took place a few days before Irinea's death, she transferred her blankets, pillows and mats to a neighbor's house without the knowledge of appellant. On September 15, 1946, the discordant state of affairs of the couple worsened when appellant slapped Irinea for refusing to explain why she had removed from their home the afore-

said belongings, and, unfortunately, as fate would have it, their passion and ill-feelings did not end there.

On *September 17, 1946,* she also removed her pot and a bamboo tube from their home, apparently preparatory to her intended purpose of abandoning appellant and of living separately from him. At about 1 o'clock in the afternoon of this day appellant saw Irinea coming down from their home accompanied by Candelaria Kirikiri, a neighbor, carrying away a cardboard box which appeared to contain some personal belongings of Irinea. Enraged, appellant ran after the two and was able to overtake his paramour in the middle of the road leading to Candelaria's house, and upon overtaking Irinea appellant boxed her twice with all his might, one on the back causing her to stagger. At that moment, brusquely grabbing Irinea by the hair and pulling her back caused her to fall to the ground, face upwards. While Irinea was lying prostrate on the ground in a helpless position, appellant bent down, cast the full weight of his body over her, placing his right knee over her abdomen, and with his two hands held her by the throat. After a while and probably thinking that he had sufficiently punished Irinea, appellant withdrew and returned to his home leaving his victim lying on the road, but in the expectation that she would get up and follow him to their house. As this did not happen, appellant came back to the spot to find Irinea in the place where he had left her still lying on the ground in a state of unconsciousness. Realizing her serious condition appellant shouted for help and penitently carried his victim to the nearby house of Macaria Ilogan, where he made efforts to revive her without success because Irinea died two hours thereafter.

In this case Dr. Isidoro P. Baradi, President of the Sanitary Division of Talisayan, issued two medical certificates or reports which have been marked as Exhibits 2 (of the defense) and A (of the prosecution). These certificates read as follows:

[Exhibit 2]

"DEATH

Irinea Taytay 25 yrs. widow, Baliwagan, Talisayan, Misamis Oriental, died of abortion—on September 17, 1946, 4:00 p.m.

Contributory: Heart failure.

Filed: September 18, 1948.

(Sgd.) I. BARADI, M.D.

Exhibit A: September 20, 1946.

TO WHOM IT MAY CONCERN:

This is to certify that I have physically examined the cadaver of Irinea Taytay this 18th day of September, 1946, at 9:00 a.m., and found out the following:

1. A fairly nourished body normal in color presenting no post-mortem rigidity.

2. Anti-mortem contusion of the right face at the point between the right cheek bony prominence and the nasal ridge.

3. Anti-mortem contusion of the right chest below the right clavicle.

4. Anti-mortem contusion of the neck left and right laterally.

CONCLUSIONS:

1. The cause of death was SHOCK due to violence inflicted upon the body of the deceased which must have been delivered one or two days before her death.

2. The above-mentioned injuries were caused by blunt object or by fist blow which must have depressed the vital centers of the body causing the death.

Very respectfully,

(Sgd.) ISIDORO P. BARADI, M.D.
President Sanitary Division
Talisayan, Misamis Oriental"

On the witness stand Doctor Baradi declared that there were strong indications that the victim was strangulated because her tongue was protruding and saliva was flowing from her mouth. Explaining the reason for the issuance of two medical certificates that are notoriously contradictory as to the cause of Irinea's death, he testified that in the afternoon of September 17, at about 6 o'clock, Luciano Idpalina went to see him with a letter requesting the examination of the body of Irinea, because he expected that her father would file charges and a post-mortem examination was deemed necessary for his protection. To this request the doctor answered that he was to examine the body on the following day. As promised, on September 18, Doctor Baradi went to the place where the body of Irinea Taytay was; he examined first the chest and then the neck, finding signs of violence on the body such as contusions and noticing that saliva was flowing out of the mouth, a sympton of strangulation. He then prepared the certificate Exhibit 2, mostly based on the information furnished by appellant, wherein it is stated that the cause of Irinea's death was abortion and contributory heart failure. He could not make an autopsy for lack of instruments though he feels positive that the cause of the death could not be abortion because, according to his investigation, she was not pregnant. After Exhibit 2 was issued the father of the deceased went to Doctor Baradi's office, and upon being asked whether Irinea Taytay was pregnant, he answered that Irinea Taytay did not give birth during the two years of marital life with the accused, and after thinking over the matter, specially the cause of death stated in his first certificate (Exhibit 2), Doctor Baradi issued the second certificate (Exhibit A) three days after the burial of Irinea Taytay.

The foregoing are, briefly stated, the facts that have been duly established by the evidence on record. In considering the merits of the appeal three questions come up for our determination, to wit: (1) What effect on the case has the denial by the court of defendant's petition at the arraignment for at least two days to prepare for trial?

(2) What was the cause of Irinea Taytay's death? Was it due to or the result of the acts of force and violence used upon her by appellant? (3) Do the facts proved by the evidence show appellant's guilt of the crime he is convicted by the lower court?

I. Article III, section 1, No. 15 of the Constitution of the Philippines, prescribes that "No person shall be held to answer for a criminal offense without due process of law." Section 7, Rule 114, of the Rules of Court, also provides:

> "*Time to prepare for trial.*—After a plea of not guilty, except when the same is on appeal from the justice of the peace, the dedenfant is entitled to at least two days to prepare for trial unless the court for good cause shown shall allow further time."

In the case of People *vs.* Valte, 43 Phil., 907, the Supreme Court held:

> "Section 30, General Order No. 58 (now sec. 7, Rule 114, of the Rules of Court), which provides that 'after his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial' is mandatory, and should be respected by the court.
>
> After a defendant has entered his plea, he is entitled, on demand and as a matter of right, 'to at least two days in which to prepare for trial', and where such a demand is properly made, the court should grant it as a matter of right.
>
> Where such a demand was made and the court refused it and forced the defendant to trial immediately after his plea was entered, and an appeal was properly taken to this court, it was reversible error, for which the defendant is entitled to a new trial."

Let us now consider if the foregoing legal provisions and jurisprudence are properly invoked in and applicable to the case at bar.

On October 22, 1946, when this case was called for hearing in the lower court Attorney Paderanga stated that his and Atty. Tirso M. Dañar's services had been only contracted that morning by the accused, that they were not prepared for the defense and that it was the desire of the accused to have the case postponed. A discussion of this petition ensued, and the following is copied from the record:

> "PROVINCIAL FISCAL:
>
> "Your Honor please, if there is no inconvenience on the part of the defense, we would like to inform this Honorable Court that all our witnesses are present here in this Court room. They are residing in a place far from this town and if the trial of this case be postponed to some other date, our witnesses will necessarily have to defray lots of expenses. Therefore, we respectfully request that we be allowed *to present the evidence for the prosecution.*
>
> "COURT:
>
> "Q. Is there no other attorney of the accused?
>
> "Attorney PADERANGA:
>
> "With regards to the manifestation of the Provincial Fiscal *to present the testimonies of their witnesses this morning, that would be agreeable to the defense, but in the interest of justice, we could not make a thorough cross examination*

of their witnesses unless and until we are fully aware of the facts of this case.

"COURT:

"The accused, knowing that he would be tried today, why did he not prepare his defense in this case before going into trial?

"Attorney PADERANGA:

"I would like to inform this Court that this is the first time that he asks for the postponement of the trial of this case, *anyhow, Your Honor, we will submit to the discretion of this Court.* (T.s.n. pp. 2–3).

The court then called Luciano Idpalina and subjected him to an examination the latter part of which, copied from the record, is also as follows:

"COURT:

"The witnesses for the prosecution are all here, and they came from far away places and if the trial today will be postponed to some other dates, they will have to incur unnecessary expenses. *You are given a few minutes to confer with your attorneys. This Court will have to hear this case today.*

"PROVINCIAL FISCAL:

"For the convenience of the parties and the accused, Your Honor, it would be better to arraign the accused.

"COURT:

"Arraign the accused.

Arraignment of the accused.

Luciano Idpalina—*not guilty.*

"Attorney PADERANGA:

"Your Honor please, *after conferring with the accused, we conclude that we should petition this Court that we be allowed to present our evidence at a later date and that we be allowed to cross examine the Physician who issued the Certificate of Death later on.*

"COURT:

"You will be allowed to present your witnesses later on and you may cross examine Dr. Baradi, later on." (T.s.n. p. 5.)

When the prosecution rested its case on that day Atty. Paderanga asked from the Court and the latter granted the following:

"Attorney PADERANGA:

"Your Honor please, we reiterate our request *to present our evidence tomorrow.*

"COURT:

"Yes, you may, however, if you have any witness here now, you can begin presenting your witnesses.

"Attorney PADERANGA:

"We have no witnesses here Your Honor, because they are residing in Balinguan, a barrio of this municipality, and Balinguan is quite far from this place.

"COURT:

"You are given until tomorrow to present your evidence." (T. s. n. pp. 48–49).

The preceding excerpts from the transcription of the stenographic notes taken at the hearing clearly show that although at first the defense properly formulated its demand for postponement, at last, and considering the precarious

condition of the witnesses for the prosecution, the matter *was left to the discretion of the court,* which, in conformity with the petitions of the Fiscal and of defense counsel, ordered the case to be heard then (Oct. 22, 1946) for the testimony of the witnesses for the government only, as the hearing was postponed until the next day, for the testimony of the witnesses for the defense, among whom was also Dr. Baradi. Under the circumstances of record We believe that it would have been better for the court to grant the defendant at least two days to prepare his defense, but as the defendant did not insist on his demand, and even yielded his right to the discretion of the court, he cannot now claim that his right to the two-day period to prepare for trial has been infringed, for that right may be waived either expressly or impliedly. (People *vs.* Miguel Moreno, 43 General Order No. 11, p. 4644-Oct. 28, 1946). The consent of the accused to an assignment of his case for trial on a certain day will constitute a waiver of that right to a longer time to prepare for trial (8 R.C.L. 67–68). Besides, taking into consideration the nature of the evidence produced by the defense; that in addition to Attys. Cayetano Paderanga and Tirso M. Dañar, defendant was also represented by Atty. Sixto B. Tagarda (t.s.n. p. 3), whose services might have been contracted before that date, because in the opening statement Atty, Paderanga only said that he and Dañar were contracted that morning and defendant's answer to a question of the court might refer also to these two lawyers; that the defendant had in fact been given time to prepare for his defense, because before the trial began he was given opportunity to confer with his lawyers, was able to present five witnesses on the following day, and to secure the issuance, at his request, of a *subpœna duces tecum* (t. s. n., p. 49), all this leads us to conclude that, had there been any error, the same is not a reversible one, for it did not impair the substantial rights of the defendant (People *vs.* Moreno, 43 General Order No. 11, pp. 4644, 4648). For this reason we hold that the proceedings in this case cannot be annulled, nor the record remanded to the lower court for new trial.

II and III. As they are closely connected with each other, we will now proceed to discuss the two other questions jointly. From the testimony of the witnesses for the prosecution Irinea Taytay was overtaken by appellant who boxed and pulled her down, face upward, then cast the full weight of his body over her, placing his knee over her abdomen, and with his two hands held her tight by the throat. Appellant in his turn declared that in the afternoon in question, while in his neighbor's house, he saw Irinea coming down from his house with Candelaria who carried a cardboard box, and upon seeing him Irinea and

Candelaria took to their heels. He further testified that he went after Candelaria to retrieve the box and said:

"When I ran after Candelaria Kirikiri, I only passed by her (my wife) on the way inasmuch as she was behind Candelaria, but after I have already recovered the card-board box which Candelaria was carrying I went back to my wife and told her not to go back to our own house because it was not good, and I told her further that I would not take her back to our own house because I am ashame to the people. She had received some contusions on her body on account of our quarrels for so many times and that is why I was ashame, but she answered me by saying that if we would ever be separated, it will be death that will separate us apart. She even requested me to let her bite me and because I did not allow her to bite me, she turned around and when she had already her back towards me, I noticed her elbow and her ears were trembling. I then left her because I thought that she was only pretending. A few seconds after, I turned to her and I found out that she was lying on the ground. I noticed that she was like crazy, because she had her hand pulling the wedge on the ground while lying down. When I went back to her, I saw that her eyes were beginning to roll up in the act of a dying person. So I shouted for help to my neighbors to help me revive my wife." (T. s. n., pp. 52–53).

We do not give any credence to this appellant's statement. On its face it is highly improbable, in conflict with the testimony of a disinterested witness and even against the declaration of Doctor Baradi whose findings about the "contusion of the neck left and right laterally" (No. 4, Exhibit A) and that "there were strong indications that the victim was strangulated" coincide with the statement of Candelaria as to the manner in which appellant manhandled Irinea. It is true that Doctor Baradi seems to have been quite imprudent and reckless in issuing certificate Exhibit 2 upon the information of the defendant, specially when the examination of Irinea's body gave him reason to suspect that the imformation he was furnished was not and could not be true. There is no doubt in our mind that Exhibit A is more in consonance with the facts proven in the case.

Bue even disregarding both certificates of Doctor Baradi the record still shows that appellant is criminally liable for the death of his paramour. From the narration of facts it appears that in the afternoon of September 17, 1946, Irinea Taytay and Candelaria Kirikiri were chased by appellant. The victim, Irinea, seemed to have a fairly nourished body, in good health, and at least in agile "running condition" when she was overtaken by appellant, pulled down, subjected to mighty blows and choked. Since that moment she did no longer recover, finally dying two hours thereafter.

"Although it is true that the reality of the fact and the reality of the cause which brought the death should be established, or said in other words, the fact of death and the criminal agency of another

person as the cause thereof are two essential conditions for the conviction and punishment for homicide or murder, when on a person in normal health physical injuries are caused, from which death may be expected, and death ensues within a reasonable time, such fatal denouement, in the absence of proof to the contrary, shall be presumed to be the natural consequence and result of the injuries inflicted upon the deceased." (People *vs.* Datu Baguinda, CA-G. R. No. 665-R, September 11, 1947.)

In the light of the evidence on record, appellant's contention that Irinea "committed suicide by not breathing or by withdrawing her breath" (t.s.n. p. 52) is starkly preposterous. We hold him responsible for the injuries inflicted upon his paramour that were the direct cause of her death.

The penalty attached by law to the crime of homicide is *reclusión temporal* (Art. 249, RPC). There being no aggravating circumstance to offset the mitigating circumstance that the offender had no intention to commit so grave a wrong as that produced (Art. 13, No. 3, RPC), the penalty prescribed by the Code has to be imposed in its minimum period (Art. 64, No. 2, RPC).

Wherefore, and in accordance with the evidence and the aforementioned provisions of the Revised Penal Code and of the Indeterminate Sentence Act (No. 4225) the Court finds Luciano Idpalina guilty of homicide with the attendance of the mitigating circumstance of having no intention of committing so grave a wrong, and sentences him to the indeterminate penalty of from six (6) years and one (1) day of *prisión mayor* as minimum to twelve (12) years and one (1) day of *reclusión temporal* as mixiumum, to indemnify the heirs of the deceased Irinea Taytay in the sum of ₱2,000.00 and to pay the costs. With such modification as to the imprisonment penalty the judgment appealed from is in all other respects hereby affirmed.

Torres and *Endencia, JJ.*, concur.

Judgment modified.

[No. 2353-R. August 10, 1948]

THE PEOPLPE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PEDRO MAGPANTAY, accused and appellant

1. CRIMINAL LAW; "ALEVOSIA" WANTING.—There was no *alevosia*, for the reason that the accused, suddenly awakened from his sleep and with the idea in his mind that they might be attacked, fired without consciously choosing means to insure the execution of the offense without risk to himself (U.S. *vs.* Namit, 38 Phil., 926.

2. ID.; MITIGATING CIRCUMSTANCE OF GRAVE FEAR; PARAGRAPH 1 OF ARTICLE 13 IN CONNECTION WITH PARAGRAPH 6 OF ARTICLE 12, REVISED PENAL CODE; CASE AT BAR.—The accused acted under the influence of the fear of being attacked. Having already in his mind the idea that they might be raided at any moment by the Dilim gang and suddenly awakened by the shot fired in

the air by his father Felix, he grabbed his gun and fired at a walking figure in the dark before he could be fired upon. The fear, however, was not entirely uncontrollable, for had he not been so hasty and had he stopped a few seconds to think, he would have ascertained that there was no imminent danger as the walking figure was not in an aggressive attitude and was unarmed. * * *. He is, therefore, entitled to the mitigating circumstance of *grave fear*, not entirely uncontrollable, under paragraph 1 of Article 13 in connection with paragraph 6 of Article 12 of the Revised Penal Code. That said two provisions may be taken together to constitute a mitigating circumstance has been declared by the Supreme Court of Spain in its decision of February 24, 1897 and by Groizard (Código Penal, Vol. 1, pp. 370–372, Third Edition.)

APPEAL from a judgment of the Court of First Instance of Quezon. Arguelles, J.

The facts are stated in the opinion of the court.

Pedro Insua for appellant.

Assistant Solicitor-General Kapunan, Jr. and *Solicitor Toma Cruz* for appellee.

JUGO, *J.:*

Pedro Magpantay was accused of murder before the Court of First Instance of Quezon. After trial he was found guilty and sentenced to suffer from four (4) years, two (2) months and one (1) day of *prisión correccional* to ten (10) years and one (1) day of *prisión mayor,* with the accessories of the law, to indemnify the heirs of the deceased in the sum of ₱2,000, and to pay the costs, the defendant to be credited with one-half of the preventive imprisonment already served. From said decision, the defendant appealed.

At about nine o'clock in the evening of April 17, 1947, a group of men approached the house of the spouses Felix Magpantay and Sancha Sales in the barrio of Bignay II, municipality of Sariaya, Quezon. Sancha opened the window of the house and saw the men cock their guns. One of them called the name of Felix. Sancha asked: "Who is calling Felix?" and she received the answer "Kami po." Sancha told them that if they did not identify themselves she would not be able to do anything for them. But finally as their leader insisted in inquiring where Felix was and fearing that they might fire, Sancha answered that her husband was in the yard of the house. Sancha called Felix. The leader of the gang hurriedly walked away some distance from the house saying that they were MP's (military police). Felix approached the group and at a certain distance the leader advanced toward him, saying that he was Captain Dilim. Felix got out his revolver asking why he had said that they were MP's and now he said that he was Captain Dilim. Dilim answered that there was an error and told him not to fire. Dilim then blew his whistle. Sancha noticed that several persons near the

house cocked their arms. When she turned a flashlight upon them, she saw that one of them was Pedro Pinion. The purpose of Captain Dilim, a fugitive from justice, was to take possession of the firearms of Felix, because he said he was organizing an armed company.

Felix warned Dilim not to come back to avoid serious consequences, but Dilim answered "I cannot tell you if I will come back or not. But I am going to establish here my soldiers."

Sometime afterwards Felix reported the matter to the MPC (Military Police Corps). Lieutenant Oscar C. Gonzales sent secret agents to investigate the matter, after which he forwarded to Felix a letter, Exhibit 4, which reads as follows:

"CONFIDENTIAL

"Camp Wilhelm, Lucena
"*25 April 1947*

"SUBJECT: Capt. Dilim and Gang
"TO: Operative Q x-9-Sariaya Sector

"Reliable information received by this Hqs states that Capt. Dilim and his gang are roaming vicinity Bo Bignay No. 2. Band also reported, making plans to eliminate you and your boys. Take precautions.

"Beware of following persons residing at your barrio:

1. Joaquin Cuello *alias* Tinis
2. Manuel Cuello (Marianito)
3. Simeon Perez
4. Francisco Andal
5. Felix Cedino *alias* Colbit
6. Melecio Salagobang
7. Pedro Penol *alias* Bulig (Pinion)
8. David Mendoza
9. Apolinar Perez
10. Feliciano Castillo

"These persons are reported to be giving protection to Capt. Dilim. Shadow this band and report result.

"(Sgd.) OSCAR C. GONZALES
"*Lt. Oscar C. Gonzales*
"*Acting I & I Officer*
"*Quezon Province*"

It will be noticed that one of the men mentioned in the above letter, of whom Felix should beware, is Pedro Penol *alias* Bulig, who is the same person as Pedro Pinion, who was afterward shot.

In view of the statement of Captain Dilim that he might come back in order to organize his soldiers and the above-quoted letter received by Felix from Lieutenant Oscar C. Gonzales, Felix took measures to protect himself and his family. He announced orally and by means of posters on the trunks of coconut trees that anybody who should pass in front of his house at night should carry a lighted lamp and when asked should give his name in order to be identified. Felix and his nephew Pedro, the accused herein,

took turns at night to guard. Felix also applied on April 20, 1947, for an appointment as special agent of the MPC, but he was given said appointment only on May 12, 1947 (Exhibit 5).

In the night of May 8, 1947, Felix and Pedro took turns to guard, so that when one was asleep the other was awake. At about nine o'clock when Pedro was asleep, the silhouette of a man passed in front of their house without any light. The night was dark and it was drizzling. The coconut trees and the bushes on the sides of the road increased the darkness. When Felix saw the silhouette, he asked it who it was, but it walked hurriedly, which made Felix suspicious as it might be a scouting guard. Felix fired into the air, yet the figure continued its way.

When Pedro heard the shot, he suddenly grabbed the rifle at his side and fired at the figure on the road, causing the death of the man. This person was afterward found to be Pedro Pinion, who was returning home unarmed after fishing in a river.

The accused testified that he intended to fire into the air but his gun accidentally discharged, hitting the figure. It is unbelievable that by accident he should fire a gun and hit a man in the darkness. It is contrary to the affidavits which he voluntarily executed before the police authorities and the justice of the peace, Exhibits B and A, in which he stated that he fired intentionally.

The next morning the accused voluntarily surrendered to the barrio lieutenant and then to the chief of police of Sariaya.

The trial court held that there was *alevosía,* because the accused fired at an unarmed man, who was not able to defend himself. It would seem, however, that there was no *alevosía,* for the reason that the accused, suddenly awakened from his sleep and with the idea in his mind that they might be attacked, fired without consciously choosing means to insure the execution of the offense without risk to himself (U. S. *vs.* Samit, 38 Phil., 926). It is clear also that there was no premeditation.

The crime committed is, therefore, homicide and not murder.

In addition to the mitigating circumstance of voluntary surrender, there is another one. The accused acted under the influence of the fear of being attacked. Having already in his mind the idea that they might be raided at any moment by the Dilim gang and suddenly awakened by the shot fired by Felix, he grabbed his gun and fired before he could be fired upon. The fear, however, was not entirely uncontrollable, for had he not been so hasty and had he stopped a few seconds to think, he would have ascertained that there was no imminent danger. The trial court found as a mitigating circumstance that the accused "labored

under troubled condition of the times," which is not exactly provided for by the Revised Penal Code. We believe, however, that he is entitled to the mitigating circumstance of grave fear, not entirely uncontrollable, under paragraph 1 of article 13 in connection with paragraph 6 of article 12 of the Revised Penal Code. That said two provisions may be taken together to constitute a mitigating circumstance has been declared by the Supreme Court of Spain in its decision of February 24, 1897 and by Groizard (Código Penal, Vol. I, pp. 370–372, Third Edition.).

Consequently there are two marked mitigating circumstances in favor of the accused. Article 64, in paragraph 5, of the Revised Penal Code provides that: "When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances." The penalty for homicide is *reclusión temporal*. The next lower penalty is *prisión mayor*, which may be imposed in the period that the court may deem applicable according to the number and nature of such circumstance.

In view of the foregoing, this Court finds the accused Pedro Magpantay guilty of homicide, with two very marked mitigating circumstances, and modifies the judgment appealed from by imposing upon him the penalty of from six (6) months and one (1) day of *prisión correccional* to six (6) years and one (1) day of *prisión mayor*. In all other respects the judgment appealed from is affirmed. Without costs in this instance. It is so ordered.

Gutierrez David and *De la Rosa, JJ.*, concur.

Judgment modified.

[No. 1497–R. August 11, 1948]

CONCEPCION MARTINEZ, plaintiff and appellee, *vs.* RAYMUNDO MEJIA, defendant and appellant

LEASE; EJECTMENT; EMERGENCY RENTAL LAWS, GROUNDS FOR EJECTMENT UNDER THE; SETTLED DOCTRINE; ARTICLE 1581 OF THE CIVIL CODE INAPPLICABLE TO CASE AT BAR.—It is now settled doctrine that under the Emergency Rental Laws, the lessee can not be ejected except (1) for willful and deliberate nonpayment of rents; (2) for subleasing the property without the written consent of the lessor; and (3) when the lessor needs the premises for the purpose of himself residing therein (Santos *vs.* Alvarez, G. R. L–332; Moya *vs.* Barton, G. R. L–745; Kalaw *vs.* Pictain, G. R. L–597). The expiration of the period being no longer a ground for ejectment from residences while the Emergency Rental Laws continue in force, it is an error to apply to the case the provisions of Article 1581 of the Civil Code.

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Villena, Nicolas & Bartolome for appellant.
Ernesto Zaragoza for appellee.

REYES, J. B. L., *J.:*

This appeal is interposed against a decision of the Court of First Instance of Manila, requiring the defendant to vacate the second (upper) floor of the apartment (accesoria) designated with No. 870, Rizal Avenue, Sta. Cruz, Manila, to pay a monthly rental of ₱180 from July, 1946, up to the surrender of the premises, and to pay the costs.

The following facts are not disputed: That the defendant was and had been for many years a lessee of the premises in question where he lives and maintains a dental clinic; that since February, 1945, he has paid a rent of ₱180 a month; that on August 7, 1946, the plaintiff notified the defendant to vacate the premises as of August 31, 1946, which defendant refused to do; that the defendant failed to pay the rental corresponding to July and August, 1946, although such failure appears due to the fact that the collector of plaintiff at the time he went to appellant's office did not bring with him the corresponding receipt and later refused to accept the payment upon instructions of the plaintiff appellee. It is likewise admitted by the defendant that in 1945 and 1946, the premises had been occupied not only by him but also by several attorneys who kept their offices there, and by the association known as "Legionarios del Trabajo."

The defendant set up, by way of defense, that he had not subleased the premises in question and that the rental of ₱180 a month is excessive, considering that the ten apartments or accesorias bearing Nos. 870–888, Avenida Rizal, are assessed at ₱76,482 only, so that the proper rent, at 20 per cent of the assessed value, should not be more than ₱64 a month. These defenses were not sustained by the lower Court.

The main issue before us in this appeal is whether the appellee has established a legal ground for the ejection of the appellant lessee.

It is now settled doctrine that under the Emergency Rental Laws, the lessee can not be ejected except (1) for willful and deliberate nonpayment of rents; (2) for subleasing the property without the written consent of the lessor; and (3) when the lessor needs the premises for the purpose of himself residing therein (Santos *vs.* Alvarez, GR L–332 Moya *vs.* Barton, GR L–745; Kalaw *vs.* Pictain GR L–579). The expiration of the period being no longer a ground for ejectment from residences while the Emer-

gency Rental Laws continue in force, the lower Court, as contended by appellant, was in error in applying to the case the provisions of article 1581 of the Civil Code. Nevertheless, we find that the lower Court correctly ruled that the lessor was entitled to reoccupy the premises in view of their sublease by the appellant without the consent of the owner.

Appellant contends that there is no proof to show that Attorneys Villena, Nicolas and Bartolome, Damian Jimenez, Pedro C. Mendiola, and the association "Legionarios del Trabajo," occupied part of the premises leased pursuant to a sublease made by defendant's assistant and ratified by said defendant; and that the burden of proof was upon the plaintiff appellee to show that such sublease was made without the written consent of the leasor. As to the nature of the occupancy of the parties above mentioned, it is incredible that they should have been gratuitously allowed to occupy a portion of the premises of the defendant appellant without paying any compensation therefor. These parties were not refugees or squatters, as appellant lessee would want us to believe, for they occupied the premises for business purposes and were not dwelling therein. The finding of the lower Court therefore that the defendant did sublease these premises appears completely justified.

Anent the burden of proof, common sense dictates that it should be on the lessee to prove the written consent of his leasor to the sublease, since that consent is a defense. Besides, the writing expressing the lessor's consent is made for the protection of the lessee and should normally be in his possession. His failure to present it to the trial Court is proof that the lessor did not agree or ratify the sublease. The latter therefore, was in violation of the Rental Law.

In view of our finding that the appellant lessee has forfeited the possession of the premises by his unauthorized sublease of the same, it becomes unnecessary to pass upon the other questions raised by the appellant.

The judgment appealed from is affirmed, with costs against appellant.

Labrador and *Paredes, JJ.*, concur.

Judgment affirmed.

[No. 1748–R. August 13, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* AVELINO CRUZ, defendant and appellant

CRIMINAL PROCEDURE; SEPARATE TRIAL; GRANTING THEREOF WITHIN SOUND DISCRETION OF COURT; CASE AT BAR.—In this jurisdiction one jointly charged with another or others in a criminal case is not entitled as of right to a separate trial. The granting thereof rests entirely within the sound discretion of the trial

court. In the present case the trial court, in the exercise of its sound discretion, properly denied appellant's motion for a separate trial although it allowed him to present his evidence separately from that of his co-accused who, in reality, did not have to present any.

APPEAL from a judgment of the Court of First Instance of Manila. J. Sanchez, J.

The facts are stated in the opinion of the court.

Avena, Villaflores & Lopez for appellant.

Assistant Solicitor-General Torres and *Solicitor Sian* for appellee.

DIZON, *J.:*

Avelino Cruz, Ernesto Damian, Eliseo Ablaza and Arsenio Doe were charged with robbery in a dependency of a church before the Court of First Instance of Manila. Inasmuch as the last two had not yet been apprehended until the day of the trial the case was tried only as to the first two accused. After the prosecution had rested its case Damian, upon motion of his counsel, was acquitted, and Cruz forthwith proceeded to present his evidence. After the case had been submitted for decision the trial court found Cruz guilty as charged and sentenced him to suffer an indeterminate penalty of not less than four (4) months of *arresto mayor* nor more than four (4) years, Two (2) months and One (1) day of *prisión correccional*, to indemnify Father Pedro Abad in the sum of ₱273, with subsidiary imprisonment in case of insolvency, and to pay one fourth of the costs. In the present appeal Cruz claims that the lower court committed the following errors:

I

"The lower court erred in not having granted the appellant a new trial for the reason that he was tried without assistance of his attorney of record but on the contrary with the unsolicited intervention of the attorney of his co-accused whose defense was antagonistic to his own, thus resulting in a defense prejudicial to him;

II

"The lower court erred in denying the petition of the appellant for a full separate trial, an error which was prejudicial to him in that he did not have an opportunity to prepare for his defense with the assistance of his counsel of record;

III

"The lower court erred in finding that appellant participated as principal in the commission of the crime charged in the information, and in not finding instead that, in rolling out the tires, said appellant acted as an innocent agent without knowledge that said tires were stolen by his co-accused;

IV

"The lower court erred in basing its finding of guilt against the appellant upon his statements Exhibits A and A–1, when it had been established that the appellant had been made to sign the same without full knowledge of their contents;

V

"The lower court erred in finding the appellant guilty of the charge beyond reasonable doubt and in not acquitting him instead on the ground that his complicity in the crime had not been established beyond reasonable doubt."

It is not disputed that between 2 and 3 o'clock in the morning of September 18, 1946, Father Abad, parish priest of Caloocan, Rizal, heard some noise coming from his garage located under the receiving room of his convent, but, out of prudence or fear, dared not attempt to find out what was the cause thereof. The following morning he discovered that the lock of his garage had been forced open and upon checking his losses he found that the robbers had taken away with them four tires with rims, one windshield, cushions, and the electric wiper of his jeep, one jacket and also his reading glasses, the estimated value of all which amounted to ₱400.

Sometime before October 11, 1946, Ablaza was arrested and upon being questioned in connection with the robbery committed in the garage of Father Abad he pointed to the appellant as one of his companions in the commission of the same. The appellant was arrested on the date aforesaid and upon being questioned made and signed the statement Exhibit A before detective Villamin, wherein he admitted, more or less, his participation in the commission of the crime in question. When Damian was apprehended on July 16, 1947, the appellant again made a statement, now in the record as Exhibit A–1, wherein he admitted more clearly, for the second time his participation in the commission of the robbery he is charged with.

The field jacket valued at ₱7 was recovered from Eliseo Ablaza while two tires with rims costing ₱20 each were recovered from some neighbors of the appellant with whom he had left them.

In the first assignment of error the appellant contends that the lower court erred in not granting him a new trial claiming in this connection that he had been tried without the assistance of his attorney of record but with the unsolicited intervention of attorney Villena who only represented the accused Damian.

It appears that the appellant was arraigned on October 25, 1946. The original trial was set for November 27 of the same year but postponed to December 10. On December 5 attorneys Avena, Villaflores, Desierto and Romero filed their appearance as attorneys for the appellant. On December 10 the trial of the case was again postponed until further assignment. Subsequently it was reset for trial on July 21, 1947 but trial actually began only on August 12. On July 21 the attorneys for the appellant were duly notified of the order of the lower court resetting the case for trial on August 12. Upon these facts

it seems obvious that the motion for continuance made in open court on the day of the trial on the ground that appellant's principal witness, whose name was not even disclosed, was in Isabela, was without merits and was, therefore, rightly denied.

According to the record, after the prosecution had rested its case attorney Avena moved the court for the postponement of the "presentation of the evidence for Avelino Cruz until his counsel comes," (trans. p. 17), which the court denied because it appeared that Cruz was then "represented by two attorneys." (Id.). Neither attorney Avena nor the appellant protested against this ruling of the court on the ground that attorney Villena did not represent the latter. To the contrary it appears that immediately thereafter the appellant was called to the witness stand to testify and the attorney who made the direct examination was attorney Villena. Upon these facts we deem it clear that the appellant had duly authorized attorney Villena to represent him in the trial of the case. Consequently the first assignment of error is not well founded.

It is also contended that the lower court erred in not giving the appellant a separate trial. This assignment of error is entirely without merits. In this jurisdiction one jointly charged with another or others in a criminal case is not entitled as of right to a separate trial. The granting thereof rests entirely within the sound discretion of the trial court. In the present case the trial court, in the exercise of its sound discretion, denied appellant's motion for a separate trial although it allowed him to present his evidence separately from that of his co-accused Damian who, in reality, did not have to present any. We fully agree, therefore, with the action taken in the premises by the trial court.

The third, fourth and fifth assignments of error may be discussed jointly for the sake of convenience.

That the guilt of the accused has been established beyond reasonable doubt cannot be doubted. The testimony of Father Abad and detective Villamin and the extrajudicial confessions made by the appellant (Exhibits A and A–1) are more than sufficient for this purpose. In Exhibit A the appellant admits having "helped them rolling the tires, in lifting other articles that were taken from the garage" and admits likewise that he and his companions "hid them in a grassy field at P. Zamora." He also makes therein an enumeration of the stolen articles. If there was any doubt as to the full meaning and import of the statements of the appellant contained in Exhibit A the same was completely removed by the clear and unqualified statements made by him in Exhibit A–1 wherein he admits that, after meeting Damian, Ablaza and the fourth member of the group, they went to the Caloocan

convent and after Damian had broken the lock of the garage they entered the same and took away the articles mentioned in both statements.

The Court is not impressed by the allegation that the appellant signed Exhibit A without knowing its contents. According to detective Villamin the said statement was translated by him to the appellant in Tagalog before the latter signed it. This subterfuge, for a mere subterfuge it is, cannot even be invoked in the case of Exhibit A–1 which is written in Tagalog and which is more detailed and more incriminating than the former.

Upon all the foregoing, we believe that the appealed judgment finding the appellant guilty of the crime charged is perfectly in accord with the evidence.

The crime committed is robbery as defined and penalized under article 299, subparagraph (*a*), No. 2 of the Revised Penal Code, in connection with the second and last paragraphs of the same article, with arresto mayor in its medium period to prisión correccional in its minimum period whose range is from two (2) months and twenty-one (21) days to two (2) years and four (4) months. The commission of the crime having been attended by the aggravating circumstance of nighttime, without any mitigating circumstance to off-set the same, the penalty provided by law, therefore, should be imposed in its maximum period whose range is from one (1) year, seven (7) months and eighteen (18) days to two (2) years and four (4) months. Applying to the case the provisions of the Indeterminate Sentence Law, therefore, the appellant should have been, as he is hereby sentenced to an indeterminate penalty of not less than two (2) months of *arresto mayor* nor more than two (2) years and four (4) months of *prisión correccional;* to indemnify the offended party in the sum of ₱353, with subsidiary imprisonment in case of insolvency, and to pay one-fourth of the costs.

Thus modified the appealed judgment is hereby affirmed.

Montemayor, Pres. J., and *Concepción, J.,* concur.

Judgment modified.

[No. 2057–R. August 14, 1948]

SALVADOR SIBUG, plaintiff and appellant, *vs.* ALEJANDRO DELANSIG, defendant and appellee *

1. FORCIBLE ENTRY AND DETAINER; HOUSE RENTALS LAW; COMMERCIAL CHARACTER OF ESTABLISHMENT, DETERMINING FACTOR OF; TEST FIXED BY THE HOUSE RENTALS LAW.—It is settled that the use to which the tenant devotes the leased premises, not the location

* See Resolution SC–G. R. No. L–2453 dated September 7, 1948. Petition dismissed; questions raised therein being unsubstantial.

thereof, is what determines the commercial character of the industry operated therein and the applicability of the House Rentals Law (Morales *vs.* Zamora, G. R. L–1433–34–35, decided on June 30, 1948). It should be noted, also, that the Supreme Court considers an establishment to be commercial when the tenant artisan (tailor, barber, shoemaker, tinsmith, etc.) "engages other tailors or barbers" or "employs others"—always in the plural—but not when he has only *one* worker or laborer, as in the present case. Indeed, the House Rentals Law does not necessarily exclude from its operation a building "used both as dwelling of the lessee and also as place of business of the latter for home industries," simply because said business may be regulated by the Code of Commerce, and, therefore, commercial (article 2, 2nd paragraph, Code of Commerce), if it is "intended for the support of the family." * * *. The test fixed by the House Rentals Law is not whether the business is commercial but whether it is a "home" industry "*intended* for the support of the family."

2. PLEADING AND PRACTICE; FORCIBLE ENTRY AND DETAINER; COMPLAINT; CAUSE OF ACTION; THERE IS NO CAUSE OF ACTION WHERE COMPLAINT DOES NOT RELY UPON ANY OF THE GROUNDS SPECIFIED IN THE HOUSE RENTALS LAW.—The complaint in the instant case does not rely upon any of the grounds specified in Secs. 2 and 11 of Commonwealth Act No. 689, as amended by Republic Act No. 66. Indeed, it is not denied that lessee was up to date in the payment of rentals at the time of the institution of this case. Neither does the lessor claim that he has to occupy the premises in question, or that lessee had subleased the same. Hence, it is apparent that the lessor has no cause of action against lessee herein.

APPEAL from a judgment of the Court of First Instance of Manila. Natividad, J.

The facts are stated in the opinion of the court.

Celestino L. de Dios for appellant.
Jimenez B. Buendia for appellee.

CONCEPCION, *J.:*

On appeal from a favorable judgment secured by the plaintiff in the Municipal Court of Manila, in which this forcible entry and detainer case was originally instituted, the Court of First Instance of Manila, after due trial, dismissed the complaint, with costs against the plaintiff. Hence, the appeal taken by the latter.

The facts are simple. Plaintiff Salvador Sibug owns an "accesoria" building located at Trabajo Street, Manila, one of the five doors of which building, bearing No. 1194, is held by defendant Alejandro Dalansig, as tenant, on a monthly rental basis, in which capacity he has occupied it for over 12 years. The defendant uses the premises both as his dwelling and that of his family—particularly the posterior portion, where there is an "entresuelo" or mezzanine—and as a place of business for a shoemaker and repair shop which he has in the portion adjoining and facing the street. On or about February 27, 1947, he

received plaintiff's letter Exhibit B, which reads as follows:

"Referring to the premises, your above-given address, wherein you are presently residing, and at the same time conducting your business as shoe repairer, shoemaker and shoe store, and which you are leasing from me on the month to month basis, I have the honor to advise you that in accordance with law, I have decided to terminate our lease agreement on the same at the end of the current month of February, 1947.

"In view thereof, kindly make arrangement to vacate said premises on the 1st day of March, 1947 and surrender the same to the undersigned, otherwise, with regrets, I shall be constrained to take this matter to the court, for your ejectment therefrom and for damages."

This demand not having been heeded, plaintiff commenced this action on March 10, 1947.

The main question for determination in this case is whether or not defendant's shoemaker and repair shop in the premises in question may be regarded as a home industry "intended for the support of the family," within the purview of the House Rentals law (Com. Act No. 689 as amended by Rep. Act No. 66). Plaintiff-appellant maintains the negative upon the ground that said property near (about 500 meters from) the temporary market, commonly known as *Talipapa*, between Trabajo and Dapitan Streets, Manila, and that the defendant has one worker or laborer, apart from a hand machine and a show case, in his shop. It is settled, however, that the use to which the tenant devotes the leased premises, not the location thereof, is what determines the commercial character of the industry operated therein and the applicability of the House Rentals law (Morales *vs.* Zamora, G. R. L–1433–34–35, decided on June 30, 1948).

Appellant relies also on the cases last cited, in which it was held that:

"* * * When a barber or tailor pursues his calling by serving customers in his dwelling, he is merely exercising a home industry and his place of abode does not thereby become commercial. But when he engages other tailors or barbers to expand his business and increase his returns, his establishment becomes commercial, and the incidental fact that his family lives therein would not include him in that class of tenants especially favored by recent emergency legislation on housing.

"It would be ridiculous indeed to hold that the well-appointed barbershops of Sta. Cruz and Quiapo would be considered "residences" simply because the family of one of the barbers happened to be quartered there.

"This distinction between the pursuit of his industry by an artisan (tailor, barber, shoemaker, tinsmith, etc.) and his setting up of a commercial establishment for purposes of gain and employing others, is admitted in legal circles.

"For instance, the sales made by artificers in their workshops of the objects produced by them is, by express statutory provision, considered

civil. (Art. 326, Code of Commerce.) But authors are unanimous that some such sales are commercial, where the artificer for purposes of gain, sets up a shop, and employs others, etc."

It should be noted, however, that the Supreme Court considers an establishment to be commercial when the tenant artisan (tailor, barber, shoemaker, tinsmith, etc.) "engages other tailors or laborers" or "employs others"—always in the plural—but not when he has only *one* worker or laborer, as in the present case. Indeed, the House Rentals law does not necessarily exclude from its operation a building "used both as dwelling of the lessee and also as place of business of the latter for home industries," simply because said business may be regulated by the Code of Commerce, and, therefore, commercial (Art. 2, 2nd paragraph, Code of Com.) if it is "intended for the support of the family." In fact, the word "business" generally connotes "commerce," and merchants are usually referred to as businessmen. Again, the sale by an artificer, in his workshop, of the objects produced by him, might be considered commercial—even if he did his work by himself alone, without the assistance of others—if the workshop is, also, in the nature of a store which remains open to the public for eight consecutive days, or has been announced by means of signs, cards, or posters or through circulars distributed to the public or inserted in the newspapers of the locality. (Arts. 2, 2nd paragraph, and 85, Code of Commerce). It is not improbable, therefore, that, precisely for this reason, the test fixed by the House Rentals law is not whether the business is commercial, but whether it is a "home" industry "*intended* for the support of the family."

In the case under consideration, we believe that such is the nature of defendant's shoemaker and repair shop. To begin with, there is uncontradicted evidence that its operation netted him from ₱40 to ₱50 a month (p. 26, t. s. n.). Secondly, there is no indication that the defendant repaired and manufactured shoes on a big scale. On the contrary, the fact that he merely had *one* laborer or worker who assisted him in repairing shoes, and an old *hand* machine, besides a show case one meter long, three feet high and two feet wide, tend to show that the amount of his business must be quite small.

Needless to say, the cases of Arcega *vs.* Dizon (42 Off. Gaz., 2138) and Tiangco *vs.* Liboro (42 Off. Gaz., 529), cited by the plaintiff, are not in point, for they refer to Commonwealth Act No. 689 *before* its amendment by Republic Act No. 66, by the inclusion, within the purview of the first law, of buildings "used both as dwelling of the lessee and also as place of business of the latter for home

industries intended for the support of the family," which is precisely the provision invoked by defendant herein.

We find, therefore, that the property in question falls under such provision, and that the defendant may not be ejected therefrom, except—pursuant to law—(*a*) "for willful and deliberate non-payment of rents"; or (*b*) "when the lessor has to occupy the building leased"; or (*c*) if the premises shall have been subleased "without the written consent of the proprietor" (sections 2 and 11 of Com. Act No. 689, as amended by Rep. Act No. 66).

The complaint herein does not rely upon any of these grounds. Indeed, it is not denied that defendant was up to date in the payment of rentals at the time of the institution of this case. Neither does the plaintiff claim that he has to occupy the premises in question, or that defendant-appellee had subleased the same. Hence, it is apparent that plaintiff-appellant has no cause of action against defendant herein.

It is further urged by the plaintiff that the lower court erred in not sentencing the defendant to pay a monthly rental of ₱70 as reasonable compensation for the use and occupation of said property. It appears, however, that the building of which the premises held by the defendant forms part, together with plaintiff's house, situated at No. 664 Dapitan, Manila are assessed for purposes of taxation, in the aggregate sum of ₱20,060, and that, according to the uncontradicted testimony of the former, the residence of the latter is bigger than said "accessoria" building. Assuming—what is favorable to the plaintiff—that the two buildings are of the same size and price, the assessed value of the apartment house would be around ₱10,030, and that each of the five apartments thereof ₱2,006, twenty per centum of which would yield yearly *less* than the monthly rental of ₱35 paid by the defendant—and by a relative of the plaintiff who occupies another apartment—at the time of the institution of this case. In any event, the lower court committed no error in making no pronouncement on the amount that should be paid by defendant herein, for the complaint merely sets up a cause of action based on the alleged right of the plaintiff to terminate the contract of lease at the expiration of any month, not on defendant's failure or refusal to pay rentals because of any issue relative to the amount of rental chargeable by the first.

Without passing, therefore, upon the sum collectible by the plaintiff as rentals, the decision appealed from is hereby affirmed, with costs against the plaintiff-appellant. It is so ordered.

Montemayor, Pres. J., and *Dizon, J.*, concur.

Judgment affirmed.

[No. 2306–R. Agosto 17, 1948]

ANICETAS SUANES, recurrente y apelante, *contra* FRANCISCO C. PEREZ y CLEMENTE K. SILVA, recurridos y apelados

1. LEY ELECTORAL; "QUO WARRANTO"; DISTINCIÓN ENTRE "QUO WARRANTO" Y MOCIÓN PROTESTA.—El *quo warranto*, en materia electoral, es de índole diferente de la *moción protesta*. El *quo warranto* es un remedio tendente a impugnar la elegibilidad para ocupar un cargo oficial electivo. La moción protesta, fundada en fraudes, anomalías e irregularidades que vician los comicios, pone en tela de juicio la legalidad misma de la elección de un candidato proclamado electo. La demanda de *quo warranto* tiene su tramitación establecida en el Art. 173, en tanto que la protesta electoral se rige por las disposiciones de los artículos 174 al 181 del Código Electoral Revisado. Ni siquiera pueden combinarse los dos recursos en un sólo procedimiento. Así es que la petición del recurrente para que, en su caso, se le declare con derecho a ocupar el cargo de miembro de la Junta Provincial de Batangas no es procedente en esta acción sumaria de *quo warranto*, aparte de la doctrina establecida al efecto de que no es justo transferir la palma de la victoria de un candidato ineligible a otro candidato que no ha recibido el veredicto popular. (Véase: 20 C. J., 38, 39; De la Rosa *contra* Yonson et al., 52 Jur. Fil., 446 y 447; Topacio *contra* Paredes, 23 Jur. Fil., 255; Nuval *contra* Guray, 52 Jur. Fil., pp. 653 & 654; Llamoso *contra* Ferrer, GA–G. R. No. 2377–R.)

2. ID.; ID.; CERTIFICADO DE CANDIDATURA; ENTRE UN CERTIFICADO DE CANDIDATURA PRESENTADO POR EL MISMO CANDIDATO Y OTRO, ARCHIVADO POR EL PARTIDO POLITICO A QUE PERTENECE, DEBE PREVALECER EL PRIMERO; CASO DE AUTOS.—En el caso de autos, P, personalmente presentó en 28 de Agosto de 1947 un certificado de candidatura a su favor, para el cargo de miembro de la Junta Provincial de Batangas. En 10 de septiembre de 1947, se celebró en Malacañan una reunión de lideres del partido Liberal de Batangas, en el que hubo proposición de candidatos para escoger un "dark horse" de entre ellos si C y L se retiraban de la lucha para la Gobernaduría de dicha provincia. En 12 de Septiembre de 1947, a las 9:15 de la mañana, el Vice-Presidente del Cómite Ejecutivo Provincial del partido Liberal de la misma provincia, por y en representación de dicho partido, y en cumplimiento de lo acordado en la referida reunión, archivó en la oficina del Secretario Provincial de Batangas el Certificado de Candidatura Exhíbito N, en el que aparece el nombre de P. como uno de los quince propuestos candidatos a Gobernador. P, en la creencia de que dicho certificado Exhíbito N se había archivado el día 11, fecha en que se juró ante él, por la mañana del 12, a su vez, presentó la carta Exhíbito M, en la que se pide el descarte del certificado de candidatura Exhíbito N, y que se considerare solamente su certificado de candidatura para el puesto de miembro de la Junta Provincial. Aun dando por supuesto que el certificado de candidatura Exhíbito N cumple con las exigencias de la ley, con todo hay abundantes doctrinas expresivas de que las leyes electorales son imperativas en y durante las elecciones y sólo son directivas después, particularmente cuando una interpretación restrictiva tienda a anular el voto popular, que ha ungido con el triunfo a un candidato en unos comicios democráticos, cuya regularidad de ninguna manera se impugna, como

en el caso de autos. Se declara: Que, el juzgado *a quo* no incurrió en error al apreciar que el archivo por P de la carta Exhíbito M, dejando sin valor el certificado Exhíbito N, esta sostenido por las pruebas; al dictaminar que P es elegible para ocupar el puesto de miembro de la Junta Provincial, a que fué elegido; y al decidir que no ha lugar al recurso de *quo warranto* solicitado en el caso presente. (Véase: Arts. 31 y 35, Ley Electoral Revisado; Am. Jur., 18, p. 188; American Law Reports Annotated, 72, p. 296; Cecilio *contra* Belmonte, 51 Jur. Fil., p. 541).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Batangas. Ángeles, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Ramón Diokno en representación del recurrente y apelante.

Baldomero B. Reyes en representación del recurrido y apelado Silva.

Eulalio Chavez y *Francisco G. Perez* en representación del recurrido y apelado Perez.

DE LA ROSA, *M.:*

El presente recurso se basa en el artículo 173 del Código Electoral Revisado.

En las elecciones generales del 11 de noviembre de 1947, para miembros de la Junta Provincial de Batangas, Maximina Reyes, Francisco G. Perez, Clemente K. Silva y Nicetas Suanes ocuparon los puestos primero, segundo, tercero y cuarto, respectivamente, de acuerdo con el escrutinio; y proclamados electos los dos primeros, en la fecha fijada por la ley entraron en funciones de sus cargos.

Por lo que alega en su solicitud, de que Francisco G. Perez y Clemente K. Silva eran inelegibles para el cargo de miembro de la Junta Provincial de Batangas, porque en 12 de septiembre de 1947, a las 9:15 a. m., dentro del plazo fijado para la presentación de certificados de candidatura, con su conocimiento el Partido Liberal archivó certificados de candidatura a favor de los dos para el cargo de Gobernador de la Provincia de Batangas, el recurrente Nicetas Suanes pide que, previa declaración de la inelegibilidad de los mismos, se declare a él con derecho al cargo de miembro de la Junta Provincial de Batangas, en un proceso perentorio de treinta días.

El artículo 173 del Código Electoral Revisado, textualmente reza:

"*Procedure against an Ineligible Person.*—When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by any registered candidate for the same office before the Court of First Instance of the province, within one week after the proclamation of his election, by filing a petition for *quo warranto*. The case shall be conducted in accordance with the usual procedure and shall be decided within thirty days from the filing of the complaint. A copy of the decision shall be furnished the Commission on Elections."

De acuerdo con este artículo, en que Suanes funda su acción, el presente recurso no tiene razón de ser en cuanto al recurrido Silva, pues es obvio que no habiendo sido éste elegido en las ellecciones generales del 11 de noviembre de 1947, ningún derecho ha adquirido para el cargo de miembro de la Junta Provincial de Batangas, susceptible de impugnación.

La petición de Suanes para que, en su caso, se le declare con derecho a ocupar el cargo de miembro de la Junta Provincial de Batangas, no es procedente en esta acción sumaria.

El *quo warranto,* en materia electoral, es de índole diferente de la moción protesta. El *quo warranto* es un remedio tendente a impugnar la elegibilidad para ocupar un cargo oficial electivo. La moción protesta, fundada en fraudes, anomalias e irregularidades que vician los comicios, pone en tela de jucio la legalidad misma de la elección de un candidato proclamado electo. La demanda de *quo warranto* tiene su tramitación establecida en al artículo 173, en tanto que la protesta electoral se rige por las disposiciones de los artículos 174 al 181 del Código Electoral Revisado. Ni siguiera pueden combinarse los dos recursos en un solo procedimiento:

"1. ELECTION; ELECTION CONTEST AND "QUO WARRANTO"; JURISDICTION.—Courts of First Instance have jurisdiction to consider an election contest under section 479, Act 3387, and also to entertain a complaint in the nature of *quo warranto* under section 408 of the same Law; but the two procedures are very different and are governed by different legal provisions, and the court's jurisdiction cannot be exercised jointly and in the same proceeding.

"2. ID.; ID.; CHOICE OF PROCEDURE.—The protestant herein could have pursued either proceeding, that of an election contest or that of a complaint of *quo warranto;* but once he has chosen the procedure of election contest, he cannot after the priod of fifteen days from the proclamation of the protestee, change his theory and maintain that the motion of protest was also a complaint of *quo warranto.* 'Having chosen between inconsistent theories, a party must adhere to such choice all through the case, and take the logical consequences upon every issue. (20 C. J., 38, 39.)' (De la Rosa *vs.* Yonson et al., 52 Phil., 446 & 447.)"

Y por encima de todas estas razones, esta la fundamental de que los tribunales no deben suplantar la voluntad popular, manifestada en unas elecciones democráticas. En el presente caso, Perez ha sido elegido en buena lid o por lo menos no protestada, en tanto que Suanes no ha merecido el sufragio del pueblo que le confiera título a la posesión del cargo que reclama. Esta carencia de derechos, motivó en Topacio *vs.* Paredes la enunciación de esta doctrina:

"* * * In the other case, there is not strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. * * *" (23 Phil., 225).

Esta doctrina se reafirmó en Nuval *vs.* Guray, como sigue:

"As to the other grounds touching this court's holding that Gregorio Nuval is the one who has been legally elected to the office of municipal president of Luna, La Union, and entitled to take possession thereof, having received second place, we consider them meritorious, for the reason that section 408 of the Election Law, providing the remedy in case a person not eligible should be elected to a provincial or municipal office, does not authorize that it be declared who has been legally elected, thus differing from section 479 of the said law, which contains such an authorization, and for the reason, furthermore, that section 477 of the said law provides that only those who have obtained a plurality of votes, and have presented their certificates of candidacy may be certified as elected to municipal offices. Elective officer are by nature different from appointive offices. The occupation of the first depends on the will of the authority providing for it. In *quo warranto* proceedings referring to offices filled by election, what is to be determined is the eligibility of the candidate elect, while in *quo warranto* proceedings referring to offices filled by appointment, what is determined is the legality of the appointment. In the first case when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy. In the second case, the court determines who has been legally appointed and can and ought to declare who is entitled to occupy the office." (52 Phil., pp. 653–654.)

Y este Tribunal de Apelaciones, en su reciente decisión en el asunto similar al presente de Llamoso *vs.* Ferrer, CA–G. R. No. 2377–R, dictaminó que:

"* * * We don't feel justified in transferring the palm of victory from an ineligible candidate to any other candidate, who did not receive the popular verdict. To do so would be undemocratic."

En cuanto al recurrido Perez, constan en autos estos detalles y circunstancias:

1. Perez, personalmente presentó en 28 de agosto de 1947 un certificado de candidatura a su favor, para el cargo de miembro de la Junta Provincial de Batangas.

2. En 10 de septiembre de 1947, hubo una reunión de lideres de Batangas en el Palacio de Malacañan, cuyo resultado lo relatan dos de sus concurrentes, a saber:

NUMERIANO U. BABAO—

"On September 10, 1947, he attended the conference at Malacañan of the Liberal Party, in answer to the written invitation of his Excellency, then President Manuel Roxas. There were present almost all of the Municipal Mayors of the Province of Batangas and other prominent political leaders of the province including the respondents. The purpose of the convention was to persuade Ex-Governor Castillo and Governor Leviste to withdraw their candidacies, and instead they be substituted with a 'dark horse'. As President Roxas was then to leave for the South that same afternoon, fifteen (15) men were selected as 'dark horses', on the understanding, that on his return, and with the help of President Laurel, they would make the final choice from among the fifteen nominees. The respondents who were also present and whose names were included among the fifteen

and publicly announced did not object. Both spoke in the convention. (T. s. n. pp. 5–15.)"

ANGEL LEVISTE—

"In the morning of September 10, 1947, he was present at the convention in Malacañan, called by his Excellency, then President Manuel Roxas for the purpose of selecting a 'dark horse' who would be acceptable to both Ex-Governor Castillo and Governor Leviste, who were supposed to withdraw their candidacies for the Office of Governor. There were many delegates from Batangas, present in the convention. It was agreed that all the possible compromise candidates should be listed, and because the matter could not be threshed out that day on account of the fact that the President was leaving for the Southern Islands, it was suggested by the President himself that a certificate of candidacy be filed in behalf of those selected in order to make them eligible in the event any of them was selected finally as the standard bearer of the Liberal party. The fifteen persons appearing in the certificate of candidacy filed by the Liberal party, Exhibit E, were the same persons nominated that morning. The respondents were present and when they were nominated, they did not make any objection, but that they gave their consent. They delivered speeches and they said they were available in case they were finally selected. In that convention, only Dr. Ilagan of Taal, Batangas, refused nomination on the ground that he was already nominated by the whole people of Taal as the candidate for mayor, unopposed, and therefore, he could not refuse the wish of his town people; and upon Dr. Ilagan's refusal, his name was not included in the list of nominees. (T. s. n. pp. 22–25)" (Alegato del recurrente pp. 5 y 6).

3. Cumpliendo con lo acordado, Esteban M. Mayo archivó en 12 de septiembre de 1947, a las 9:15 de la mañana, en la oficina del Secretario Provincial de Batangas el Exhíbito N, de este tenor:

"CERTIFICATE OF CANDIDACY

"The undersigned, Esteban M. Mayo, Vice-President of the Provincial Executive Committee, Liberal Party, Province of Batangas, and Provincial Campaign Manager announces the candidacy of the following named persons for the office of Provincial Governor of Batangas in the coming elections:

1. Apolinario Apacible
2. Conrado Buendia
3. Gavino S. Abaya
4. Eusebio Lopez
5. Clemente K. Silva
6. Angel Leviste
7. Meynardo Farol
8. Olegario B. Cantos
9. Francisco A. Medrano
10. Francisco G. Perez
11. Bernabe Malvar
12. Ambrosio Umali
13. Pedro P. Muñoz
14. Pedro Pasia
15. Narciso Diokno

and states that they are all residents of the Province of Batangas; that they are eligible for the above-mentioned office; that they belong to the Liberal Party, and that for all election purposes, their respective addresses are: Tuy, Batangas; Bauan, Batangas; Batangas, Batangas; San Juan, Batangas; Lipa, Batangas; Malvar, Batangas; Bauan, Batangas; Batangas Batangas; Batangas, Batangas; Sto. Tomas, Batangas; San Jose, Batangas; Bauan Batangas; Cuenca, Batangas and Taal, Batangas.

"In witness whereof, I hereby sign these presents at Lipa City on the 11th day of September, 1947.

"(Sgd.) ESTEBAN M. MAYO

"Subscribed and sworn to before me this 11th day of September, 1947, the affiant exhibiting to me his Residence Certificate No. A–1769804, issued at Lipa, Batangas, on January 2, 1947.

"(Sgd.) FRANCISCO G. PEREZ
"*Notary Public*
"*Commission expires December 31, 1948.*"

4. Perez, ante quien se juró el Exhíbito N y en el que aparece su nombre, declaró que en la creencia de que dicho Exhíbito N se había archivado el día 11, fecha en que se juró, por la mañana del 12, a su vez, presentó la carta Exhíbito M, redactada así:

"Batangas, Batangas
"September 12, 1947

"The PROVINCIAL SECRETARY
"Batangas, Batangas

"Sir:

"In connection with the certificate of candidacy for the Office of Provincial Governor of Batangas filed in my behalf by Mr. Esteban Mayo, I have the honor to make of record that I disregard the same.

"Please consider only my certificate of candidacy for the provincial board for which position I personally filed my certificate of candidacy.

"Sincerely yours,

"(Sgd.) FRANCISCO G. PEREZ
"*Candidate for Member of the Provincial Board of Batangas.*"

5. En 27 de septiembre de 1947, Mayo retiró el certificado de candidatura Exhíbito N. (Exhíbito Q).

El Juzgado *a quo* sobreseyó este recurso de *quo warranto*, y contra su fallo Suanes se alzó, señalando en su alegato estos dos errores:

I

"The trial court erred in holding that the respondents are eligible for the office of the member of the Provincial Board of Batangas despite the fact that, after they had filed their respective certificates of candidacy for that office, the political party with which they are affiliated filed, in their behalf and with their knowledge and consent, a certificate of candidacy for the office of governor.

II

"The trial court erred in holding that the respondent Francisco G. Perez had, on September 12, 1947, withdrawn the certificate of candidacy filed in his behalf, and with his knowledge and consent, by the political party with which he was affiliated."

Contiéndese que por haber Perez permitido que Mayo presentara un certificado de candidatura a su favor para el cargo de Gobernador de la Provincia de Batangas, le constituyó en agente suyo, haciendo los actos de éste tan personales de él como la presentación, que hiciera por si mismo en 28 de agosto de 1947, de su certificado de candidatura para miembro de la junta provincial, por lo que el caso debe resolverse de conformidad con el siguiente precepto del Código Electoral Revisado:

"SEC. 31. *Certificate of Candidacy for only one Office.*—No person shall be eligible unless, within the time fixed by law, he files a duly

signed and sworn certificate of candidacy, nor shall any person be eligible for more than one office to be filled in the same election, and, if he files certificate of candidacy for more than one office, he shall not be eligible for any of them."

El contenido del certificado de candidatura Exhíbito N y las declaraciones de Babao y Leviste revelan que no hubo tal nominación de candidatos en Malacañan el 10 de septiembre de 1947, sino proposición de candidatos para escoger un "dark horse" de entre ellos, si Castillo y Leviste se retiraban de la lucha, así es que Mayo, contrario a los precedentes, anunció los nombres de quince candidatos del partido Liberal para el cargo unico de Gobernador de la Provincia de Batangas, y no creyó necesario que el Secretario del partido firmara con él el certificado de candidatura Exhíbito N que archivó al efecto.

La ley provee:

"SEC. 35. *Certificate of Candidacy filed by political group or political party.*—* * * Any political party having officially nominated candidates shall file with the Commission on Elections a certificate of such official nominations subscribed under oath by the president and secretary or corresponding officers of such political group or party."

Aun dando por supuesto que el certificado de candidatura Exhíbito N cumple con las exigencias de la ley, con todo existe esta otra provision:

"SEC. 35. *Certificate of candidacy filed by political group or political party.*—* * * If a candidate who filed his own certificate of candidacy for an elective office is also nominated by one or more political parties for other elective offices, the certificate filed by the candidate himself shall govern."

Esta disposición es tan expresa como la del Artículo 31. Las dos no contienen contradicciones que requieran interpretación que las armonice. Preveen casos distintos, y el artículo 35 que viene después, sin contener ninguna distinción, abarca ambos casos en que el candidato sepa o ignora que un partido o partidos politicos le han nominado y a su favor han presentado un certificado de candidatura para otro cargo. Además, la contención de que Mayo se hizo agente de Perez no es de tener en cuenta, (*a*) porque el mismo artículo 31 del Código Electoral, que invoca el apelante, expresamente dice:

"No person shall be eligible unless, within the time fixed by law he files a duly signed and sworn certificate of candidacy, * * *",

de tal modo que es una exigencia que el candidato mismo firme y jure su certificado de candidatura, la cual no puede cumplirse por un agente; y (*b*) porque, en el caso de autos, Mayo ha hecho constar en el Exhíbito N que actuaba "* * * in representation of said Party (Liberal Party) * * *", y los partidos políticos obran por iniciativa propia, nominan sus candidatos y no actuan como meros agentes. (Art. 35, par. 2, *supra.*)

Por otra parte, hay abundantes doctrinas expresivas de que las leyes electorales son imperativas en y durante las elecciones y sólo son directivas después, particularmente cuando una interpretación restrictiva tienda a anular el voto popular, que ha ungido con el triunfo a un candidato en unos comicios democráticos, cuya regularidad de ninguna manera se impugna, como en este caso.

En American Jurisprudence (18 p. 188), se lee:

"*Construction of Statutes.*—Settled rules of statutory construction are applied in interpreting legislation relating to elections. Such statutes should be liberally construed, especially in favor of citizens whose right to vote they tend to restrict. In order to give effect to the will of the majority and to prevent the disfranchisement of legal voters, the courts uniformly have held to be formal and directory those provisions which are not essential to a fair election. Even provisions of an election law which are viewed as mandatory, if enforcement is sought before election in a direct proceeding, will be held directory only in a proceeding after the election, unless an essential element of the election is affected or there is an express declaration in the statute that the act is essential to a valid election or that its ommission will render the election void, in which case all courts whose duty it is to enforce the statute must so hold, regardless of whether the particular act goes to the merits or affects the result of the election."

En American Law Reports, Annotated (72 p. 296), se dice:

"In two other cases, Earl v. Lewis (1904) 28 Utah, 116, 77 Pac. 235, and Blacmer v. Hildreth (1902) 181 Mass. 29, 63 N. E. 14, it was held in effect, that election statutes containing, *inter alia*, requirements as to the time of filing nomination certificates, were directory in character * * * "

Más importante, por la liberalidad de interpretación que encierra, es esta doctrina de nuestro Tribunal Supremo en Cecillo *vs.* Belmonte:

"3. ID.; ID.; CONTESTING PROTESTEE'S VOTES FOR LACK OF CERTIFICATE OF CANDIDACY.—The absence of a certificate of candidacy before the elections may justify the elimination of the name of a candidate for a provincial or municipal office; but after the canvas of votes, the will of the people must not be frustrated by the technicality that the certificate of candidacy had not been filled during the probatory period." (De Guzman *vs.* Board of Canvassers of La Union, and Lucero, 48 Phil., 211.) (51 Phil. p. 541.)

No esta demás expresar que las conclusiones del juzgado *a quo* concernientes al archivo por Perez de la carta Exhíbito M, dejando sin valor el certificado Exhíbito N presentado por Mayo, están sostenidas por las pruebas y no hay, por lo tanto, razón para alterarlas.

Se confirma la decisión apelada, con las costas al apelante. Así se ordena.

Jugo y *Gutiérrez David, MM.*, están conformes.

Se confirma la sentencia.

[No. 1259–R. August 21, 1948]

TESTATE ESTATE OF THE LATE JESUSA BARRIOSO: MERCEDES JAVELLANA, petitioner and appellee, *vs.* EMILIO GARCIA, oppositor and appellant.

1. CONTRACTS; LEASE OF SHARES OF ARABLE LANDS; ABSENCE OF CONTRACT OF PARTNERSHIP; LAW APPLICABLE.—In the case at bar, the record does not disclose that there has been a contract of partnership between the contracting parties with regard to the production of palay nor any other agreement about it; consequently, the last clause of article 1579 of the Civil Code, to wit, that in default of any contract of partnership or other kind of agreement, the lease of arable lands shall be governed by the customs of the country, finds perfect application. Moreover, in accordance with the contracts W–13 and W–14, the appellant should dedicate the haciendas in question to the production of sugar and not of palay. Nevertheless, the appellant did dedicate said Haciendas to produce palay, in violation of said contracts and of paragraph 2 of article 1555 of the Civil Code which provides that the lessee shall apply the land to the use agreed upon. Under these circumstances, the appellant has no right to invoke the terms of contracts that he himself has violated.
2. INTESTACY; HEIRS, THEIR ACTS; NOT BEING PARTIES TO THE CONTRACT, HEIRS CANNOT BIND THE TESTATE ESTATE.—The act of some of the heirs in receiving from the appellant amounts of palay at the rate of 10 per cent and 8 per cent of the total production of palay reaped from the haciendas in question, cannot bind the testate estate of the deceased J. B. Said heirs were not parties to the original contracts Exhs. W–13 and W–14 and their conduct cannot in any way affect the rights of the appellee to claim the lawful share of the palay raised from the Haciendas in question in accordance with the provisions of article 1579 of the Civil Code.

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Hervas & Concepcion for appellant.
Lopez Vito & Delicana for appellee.

ENDENCIA, *J.:*

This is an appeal from an order of the Court of First Instance of Iloilo dated January 18, 1947, which is as follows:

"Por tanto, desaprobando en parte la cuenta del arrendatario Emilio Garcia, fechada 11 de octubre último y que corresponde a los años de 1943 a 1944–1945, se declara que dicho Emilio Garcia está en deber a esta testamentaría en trescientos cincuenta y tres y medio (353½) bultos de palay de cincuenta (50) gantas cada uno, los cuales deberá entregar a la albacea-administradora, o en su defecto su valor entonces en plaza, dentro del plazo de noventa (90) días contado desde la fecha en que se levante la moratoria provista en las Ordenes Ejecutivas Nos. 25 y 32, series de 1944 y 1945, de Su Excelencia el Presidente de Filipinas.

It appears that the appellant was the lessee of several parcels of land known as Hacienda Banquiling, Hacienda

Bungca, Hacienda Cabag-o and Hacienda Buyong, all situated in Barotac Nuevo, Province of Iloilo, which were leased unto him by Jesusa Barrioso, while alive, under written contracts, offered in evidence as Exhibits W–13 and W–14. By the terms of these contracts, the land should be dedicated to the production of sugar and the lessee should pay 10 per cent of the annual production of sugar from the Hacienda Banquiling and 8 per cent of the annual production of sugar from the Hacienda Bungca, Cabag-o and Buyong. Contract Exhibit W–13 was executed on April 30, 1939, for a term of ten years, and contract Exhibit W–14 was executed on December 12, 1939, for an equal period of time. After the execution of these contracts Emilio Garcia took possession of the aforementioned haciendas and up to 1942 complied with the obligations he contracted under the two contracts of lease and personally delivered to Jesusa Barrioso her share in the production of sugar of the lands. In that year, Jesusa Barrioso died, and her testate estate proceedings were instituted, Mercedes Javellana, the appellee herein, being appointed administratrix of said estate. In 1943, and subsequently thereafter, Emilio Garcia planted and produced *palay,* instead or *sugar,* in the lands leased to him, thus failing since then to comply with the contracts. In the year 1944, some of the heirs of Jesusa Barrioso forcibly took possession of the time the lessee Emilio Garcia lost possession of said haciendas.

On April 4, 1946, the administratix Mercedes Javellana petitioned the Court *a quo* to require Emilio Garcia to deliver to the testate estate the share of the estate in the production of the haciendas leased unto him and to explain why he failed to deliver such share. On April 13, 1946, the lower court granted the petition and ordered Emilio Garcia to appear before the court to explain why he should not deliver the share of the testate estate in the production of the lands leased to him. On October 11, 1946, Emilio Garcia appeared before the court and rendered an account of the production of the haciendas and stated that instead of sugar he produced palay, as follows: In the year 1943, 312 bultos from Hacienda Banquiling and 150 bultos from the Hacienda Bungca, Hacienda Cabag-o and Hacienda Buyong. In the year 1944, 426 bultos from the Hacienda Bungca, Hacienda Cabag-o and Hacienda Buyong, and in the year 1945, 381 bultos from Hacienda Cabag-o and Hacienda Buyong and in 1946, 321 bultos from the same hacienda. He likewise stated that in 1944 he was dispossessed by some heirs of the late Jesusa Barrioso of the Haciendas Banquiling and Bungca, and could not dedicate them since that year to any plantation; that 100 bultos were seized by the civil authorities through one named Ramon Bayona, and that 58 bultos were given

by him to Paz J. Vda. de Gonzales, M. Javellana, C. Garcia, N. Araujo, R. Salvador, F. Garcia, J. Garcia and E. Garcia, heirs of Jesusa Barrioso, as evidenced by Exhibits W–4 to W–11. He then prayed that all these amounts of palay be deducted from those that he should deliver to the testate estate of the deceased Jesusa Barrioso.

After hearing, the account was duly submitted for its approval, and acting thereon the lower court divided the 1,870 bultos of palay produced by Emilio Garcia from the haciendas in question into two parts, and adjudicated one-half thereof to the tenants who worked on the land and the other half to the owner of the Haciendas. The latter half was again divided between the testate estate of Jesusa Barrioso and Emilio Garcia, thus corresponding to each 467½ bultos of palay, and from the portion belonging to the testate estate of Jesusa Barrioso the court deducted 114 bultos and Emilio Garcia was ordered to deliver to the appellee 353½ bultos of palay. Emilio Garcia, not being satisfied with the decision, perfected his appeal and in this instance claims that the lower court erred:

"1. In applying the customs of the place instead of the provisions of the contract as interpreted by the acts of the parties themselves.

"2. In holding that if the provisions of the contract were applied, the result would be inequitable.

"3. In granting "equity' to the appellees despite the fact that they do not come to court with clean hands.

"4. In crediting appellant with only 114 bultos of palay instead of the 158 bultos appellant is entitled to.

"5. In ordering appellant to deliver to the appellees, as balance for the 1943–1946 crop years, the total of 353½ bultos of palay."

Under the facts above stated and the assignment of errors just quoted, it could be readily seen that the questions the Court has to decide can be reduced to the following: (1) What should be the amount of palay to be divided between Emilio Garcia, the appellant and the appellee; (2) Are the contracts Exhibits W–13 and W–14 applicable to the division of said production of palay between the aforementioned parties?

It is an admitted fact that the Haciendas leased unto the appellant produced in the years 1943, 1944, 1945, and 1946, one thousand eight hundred seventy (1,870) bultos of palay; one half of which should correspond to the tenant who worked on the Haciendas and the other half to the owner of said Haciendas. Likewise it is proven that 100 bultos of palay have been taken or confiscated by the civil authorities in 1944, and justice demands that said amount be deducted from the 935 bultos corresponding to the owner of the Haciendas, thus resulting that the net amount of palay which should be shared by the appellant and the appellee is reduced to 835 bultos.

Appellant claims that the percentage of production of the Haciendas appearing in the contracts of lease Exhibits

W–13 and W–14, to wit: 10 per cent of the production of sugar from the Hacienda Banquiling and 8 per cent of the other production of sugar from the Haciendas Bungca, Cabag-o and Buyong, should be applied to the palay in question. The appellee, in turn, urges that it should not, alleging that said contracts contain no provisions about production of palay but only of sugar. It is undisputable that the contracts of lease specifically refer to the production of sugar, and that no stipulation has been made therein with regard to the production of palay. Hence, with regard to production of palay from the Haciendas leased unto the appellant, there is no written or implied contract between the parties. It follows that appellant's contention that the rate of percentage appearing in contracts Exhibits W–13 and W–14 should be applied in the present case is completely untenable. Appellant invokes in his favor Articles 1579 of the Civil Code which provides that "leases on shares of arable land, breeding cattle, and of industrial or manufacturing establishments shall be governed by the provisions relating to the contract of partnership and by the agreements of the contracting parties, or, in default thereof, by the customs of the country". In the case at bar the record does not disclose that there has been a contract of partnership between the contending parties with regard to the production of palay nor any other agreement about it; consequently, the last clause of the aforecited article of the Civil Code, to wit, that in default of any contract of partnership or other kind of agreement, the lease of arable lands shall be governed by the customs of the country, finds perfect application. Moreover, in accordance with contracts W–13 and W–14, the appellant should dedicate the Haciendas in question to the production of sugar and not of palay. Nevertheless, the appellant did dedicate said Haciendas to produce palay, in violation of said contracts and of paragraph 2 of article 1555 of the Civil Code which provides that the lessee shall apply the land to the use agreed upon. Under these circumstances, the appellant has no right to invoke the terms of contracts that he himself has violated.

Appellant insists, however, that the terms of said contracts were given effectivity by some heirs of the deceased Jesusa Barrioso when they received from the appellant amounts of palay at the rate 10 per cent and 8 per cent of the total production of palay reaped from the Haciendas in question. Appellant argues that because of this the Court should now enforce the percentages mentioned in said contracts in dividing the palay in question between the estate and the appellant. We find, however, that this contention is untenable. The act of the heirs cannot bind the testate estate of Jesusa Barrioso. Said heirs were not parties to the contracts and their conduct cannot in any way effect the rights of the appellee to claim the lawful

share of the palay raised from the Haciendas in question in accordance with the provisions of the aforecited article 1579 of the Civil Code.

The record shows that in the locality where these Haciendas are situated, the custom of the people is to divide between the tenant and the owner of the land, share and share alike, the palay produced thereon; hence the 835 bultos of palay in question should be divided into two halves, one to be adjudicated to the testate estate of Jesusa Barrioso and the other to the appellant Emilio Garcia. It appearing, however, that the heirs of Jesusa Barrioso have taken 58 bultos and the appellee admits that this amount of palay should be deducted from the share corresponding to the testate estate, it results that the appellant should deliver to the appellee 359½ bultos of palay.

Wherefore, and with the modification as to the amount of palay that appellant shall deliver to the appellee, which is increased to 359½ bultos instead of 353½, the decision appealed from is otherwise affirmed, without pronouncement with regard to costs.

Torres and *Felix, JJ.*, concurs.

Judgment modified.

[No. 2332–R. August 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANGEL TAMPOK, defendant and appellant

CRIMINAL LAW; HOMICIDE; ACCOMPLICE; CONSPIRACY; CONSPIRACY BY INFERENCE MAY BE DRAWN AGAINST ACCOMPLICE; CASE AT BAR.—It is true that evidence is wanting as to the criminal conspiracy between V. C. and the herein accused on which the latter may be held responsible as principal. But from acts of concert in the commission of the crime and the form and manner in which assistance was rendered, the inference of criminal participation in the criminal design may be drawn as against an accomplice, where the same inference for the purpose of holding an accused in the character of principal would not be drawn (People *vs.* Tamayo, 44 Phil., 38). In the instant case, the appellant was not unaware of the criminal design of his co-accused wherein he participated sufficiently and with effect to make him responsible as an accomplice. * * *. The fight commenced with hurling of stones by one group at the other group. Then, V. C. with an open knife pursued the deceased. At that very moment, accused threw a stone at the latter causing him to stumble down thereby enabling V. C. to overtake the deceased and to inflict the mortal wound. After the incident, both the appellant and his co-accused fled and were not arrested until after several days. Hence, it is obvious that accused contributed effectively and materially towards the killing of the deceased. His re sponsibility cannot be independent. (See: El Pueblo de Filipinas *contra* Maximo Aplegido, et al G. R. L–163, April 27, 1946; Vol. 43, Off. Gaz. page 118; Sentencia de 6 de julio de 1881, Gaceta de 15 de Septiembre; 2 Viada, 5.a edición, págs. 430, 431.)

APPEAL from a judgment of the Court of First Instance of Quezon. Arguelles, J.

The facts are stated in the opinion of the court.

Vicente Correa for appellant.
Assistant Solicitor-General Barcelona and *Solicitor Bautista* for appellee.

GUTIERREZ DAVID, *J.:*

In the afternoon of July 30, 1947, in the municipality of General Luna, Province of Quezon, Alfredo Alladel was stabbed to death by Valentin Cataytay. For such death, said Cataytay and Angel Tampok, the herein appellant, were charged with homicide in the Court of First Instance of Quezon. The case was dismissed as to Cataytay due to his death before the trial. Found guilty as accomplice to the crime of homicide and sentenced to suffer an indeterminate penalty of from 6 months and 1 day of *prisión correccional* to 6 years and 1 day of *prisión mayor,* and to pay indemnity plus costs, Angel Tampok appealed.

At the celebration of the town fiesta of General Luna, Province of Quezon, on July 30, 1947, a visiting team of volley-ball came from the municipality of Unisan, of the same province, to play with a local team. Hilarion Alladel, Alfredo Alladel and Ramon Alas came with the Unisan group. About 6 o'clock in the afternoon of said date and after the game was over, a commotion occurred in front of the municipal building close to the house where the visiting players were staying. The commotion was due to hurling of stones between two groups. During the stoning, Cataytay menacingly held an open knife and ran after Alfredo Alladel. The latter fell face downward. Whereupon, Cataytay came upon him and stabbed him with a knife on the back, causing the latter's death a few hours later. Hilarion Alladel and Ramon Alas, who witnessed the affray, succored the dying Alladel.

There seems to be no dispute as to the foregoing facts. The discrepancy lies with regard to appellant's participation and liability in the crime at bar. According to the prosecution the commotion which occurred in the afternoon of the aforementioned date was due to the fact that several persons from General Luna, among them Valente Cataytay, Leon Patiag and Angel Tampok, the herein appellant, were hurling stones at the Unisan group. Each had his respective target. Appellant had Alfredo Alladel as his objective. While the latter was running away from the defiant Cataytay who was then armed with a knife, appellant threw a stone which landed on Alfredo's back causing him to fall face downward. It was at this juncture that Cataytay gave the deceased the fatal blow at the back. After the stabbing, Ctaytay, Patiag and the appel-

lant ran away shouting that the people from Unisan were coming.

On the other hand, appellant's version is as follows: That about 6 o'clock p. m. on the aforementioned date, the appellant, Valente Cataytay and Leon Patiag met accidentally on the street of General Luna while each was on an afternoon walk on the occasion of the town fiesta. Suddenly more than 6 persons assaulted Cataytay, one of them berating the latter sarcastically, "So you are the one acting as tough guy in General Luna." Thereupon, a fist fight followed, then stoning. At that precise moment, appellant, for fear that he might be involved in the fight, went away for safety to a place about 8 meters away from the scene of the quarrel. From there, he saw Alfredo Alladel's feet slip into a canal, causing him to stumble face downward on the ground. While said Alladel was trying to get up, Cataytay came upon him and stabbed him with the knife. The appellant ran to the store nearby, but having been threatened by the owner thereof to shoot him he would not stay out, he ran to a house at the center of the poblacion where he was then residing and stayed there the whole night.

In this appeal, appellant contends that the trial court was in error in finding that it was the stone which appellant had thrown that made the deceased fall face downward; in holding that appellant is guilty as an accomplice to the crime of homicide and in imposing upon him the penalty fixed in the decision appealed from.

As can be gleaned from the appellant's version, the defense is that the herein appellant took no part whatsoever in the killing of the deceased and that the responsibility for the crime lies solely in appellant's co-accused Valente Cataytay, who is now dead.

Appellant's claim of non-participation is untenable. Hilarion Alladel, an eye-witness, identified him as the person who threw the stone that disabled the deceased and caused him to be overtaken and stabbed to death by the killer Valente Cataytay. Considering that said witness was only five meters from the appellant at the time of the occurrence and that the incident took place in a bright afternoon, the former could not be possibly mistaken in recognizing the appellant. The mere coincidence that Hilarion Alladel, the state witness, was related to the deceased is no indication that he had wilfully distorted the truth.

The testimony of Hilarion Alladel is assailed on the ground that it is allegedly inconsistent with his previous statement contained in Exhibit 1 wherein he stated that one by the name of Leon Patiag was the one who threw the stone that hit the deceased. Said discrepancy was satisfactorily explained and rectified in the preliminary investigation and in the trial in the lower court. Hilarion

stated to the investigators that he recognized by face the person who threw the stone and who was then wearing a white shirt Inasmuch as Leon Patiag was the only one arrested in the night of the incident and was confined in a dark cell and was also wearing a white shirt, although flower-designed, and Hilarion Alladel having been told upon his inquiry that the name of said detained was Leon Patiag, the latter naturally mentioned said name in his affidavit Exhibit 1. The failure of the investigator to confront the the witness with the detained prisoner was due to the fact that the latter was lying down drunk in an unlighted cell and to the further fact that Hilarion was then in a hurry to go with his party to Unisan, bringing with them the victim, Alfredo Alladel. Such were the facts responsible for the confusion as to the real name of the culprit. But witness Hilario Alladel clearly identified the appellant at the preliminary investigation and at the trial of this case in the court below. His failure to give a detailed description of appellant's physical features is not a sign of doubtful testimony nor of falsehood.

It is urged that the absence of any sign of physical injuries in the body of the deceased other than the stab wound inflicted by the assailant Cataytay discredits the version of the eye-witness to the effect that the appellant threw the stone that rendered the deceased powerless. As correctly pointed out by the Solicitor General, inasmuch as the one who examined the body of the deceased was only an Assistant Sanitary Inspector and that a detailed and careful *post mortem* examination was not made, all that said inspector could have done, like any layman, was to measure the dimensions of the wound without paying particular attention to the other portions of the body.

True, evidence is wanting as to the criminal conspiracy between Valente Cataytay and the herein appellant on which the latter may be held responsible as principal. But from acts of concert in the commission of the crime and the form and manner in which assistance was rendered, the inference of criminal participation in the criminal design may be drawn as against an accomplice, where the same inference for the purpose of holding an accused in the character of principal would not be drawn (People *vs.* Tamayo, 44 Phil., 38). In the instant case, we are satisfied that the appellant was not unaware of Cataytay's criminal design wherein he participated sufficiently and with effect to make him responsible as an accomplice. The evidence reveals that the conflict was between two rival groups, to wit: the volley-ball players from Unisan and those of General Luna, the appellant and his co-accused, Valente Cataytay, being from General Luna. So, they were allies and the deceased, who came from Unisan, was their common adversary. The fight com-

menced with hurling of stones at the Unisan group. Then, Valente Cataytay with an open knife pursued the deceased. At that very moment, appellant threw a stone at the latter causing him to stumble down thereby enabling Cataytay to overtake the deceased and to inflict the mortal wound. After the incident, both the appellant and his co-accused fled and were not arrested until after several days. Hence, it is obvious that appellant contributed effectively and materially towards the killing of the deceased. His responsibility cannot be independent.

"De lo dicho se infiere que la complicidad implica cierta participación en la voluntad o proposito generador del delito, pues cooperar significa desear o querer en comun una cosa. Pero esa voluntad o proposito comun no quiera decir necesariamente previa inteligencia, como asevera el abogado de la defensa, pues puede explicarse o extraerse de las circunstancias de cada saco." (El Pueblo de Filipinas *v.* Maximino Aplegido, et al G. R. L–163, April 27, 1946; Vol. 43, Off. Gaz. page 118).

"El que habiendo tomado parte en una disputa o cuestión que tuviera un compañero suyo con el interfecto, al encontrarse con éste le derriba al suelo, en cuya situación su compañero le dá un puntapie en la cabeza que le produce la muerte, será responsable como complice del homecidio ejecutado?—El Tribunal Supremo ha resuelto la afirmativa: 'Cnsiderando que no se ha cometido error respecto a la participación de complice que se atribuye por la sala al procesado Manuel Callejo, pues figurando y tomando parte en las cuestiones que tuvieron con el interfecto y sus compañeros en aquella noche, y ultimamente tirandole al suelo, en cuya situación Victoriano Vela le dió un puntapie en la cabeza, de cuyas resultas falleció, no cabe duda alguna que cooperó a que tuviera lugar el homicidio por actos anteriores y simultaneous, y, por consiguiente, no estando comprendido en los casos del artículo 13 del Código Penal para considerarle autor, es aplicable lo dispuesto en el 15, etc.' (Sentencia de 6 de julio de 1881, Gaceta de 15 de Septiembre) (2 Viada, 5.a edicion, pags. 430, 431.)

On the whole, in our opinion, the guilt of the appellant as an accomplice in the crime of homicide has been established beyond cavil and the assailed holdings of the lower court are correct.

Pursuant to article 294, in relation with article 52, of the Revised Penal Code, and in the absence of modifying circumstances, the penalty imposable to the appellant is *prisión mayor* in its medium period or from 8 years and 1 day to 10 years. The maximum penalty imposed by the lower court is therefore below the range. It should be 8 years and 1 day instead of 6 years and 1 day. The indemnity to the heirs of the deceased should be raised to ₱1,500 (People *vs.* Amansec y Bucao, G. R. No. L–927 prom. March 11, 1948).

Thus modified, the judgment appealed from is hereby affirmed in all other respects, with costs against the appellant.

Jugo and *De la Rosa, JJ.*, concur.

Judgment modified.

[No. 1403–R. August 24, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* GIL KAPALARAN, defendant and appellant

CRIMINAL PROCEDURE; INFORMATION FOR TREASON INCLUDING THAT OF ARSON; DISMISSAL OF FORMER (TREASON) CASE ITS EFFECT UPON THE LATTER (ARSON) CASE; SECTION 4, RULE 116 RULES OF COURT AND SECTION 2, COMMONWEALTH ACT NO. 682.—The appellant contends that the lower court committed error in not dismissing the case and absolving him upon the failure of the prosecution to prove appellant's citizenship. This contention cannot be upheld. True, the element of citizenship was not established so appellant was acquitted of treason. But in the crime of arson citizenship is not essential. Inasmuch as this crime was included in the charge (Count 4 of the information) and was proved during the trial, the appellant could be convicted thereof pursuant to section 4 of Rule 116 of the Rules of Court and section 2 of Commonwealth Act No. 682.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Antonio P. Madrigal for appellant.

Assistant Solicitor-General Rosal and *Solicitor Tomacruz* for appellee.

GUTIERREZ DAVID, *J.:*

An 8-count information for treason was filed against Gil Kapalaran in the Court of First Instance of Cebu. After trial, the court *a quo* absolved the defendant from the charges of treason because his citizenship was not established, but convicted him of the crime of arson alleged in Count 4 of the information, and sentenced him therefor to suffer an indeterminate penalty of from 2 years, 4 months and 1 day of *prisión correccional* to 8 years and 1 day of *prisión mayor,* with the accessories of the law; to indemnify the offended parties, with subsidiary imprisonment, and to pay the costs. Hence this appeal.

Appellant was a sergeant in the Bureau of Constabularly during the Japanese regime. He was incharge of a detachment stationed in the municipality of San Fernando, Cebu. As member of the Bureau of Constabulary which was entrusted to take care of the peace and order, appellant periodically delivered speeches in the town of San Fernando and neighboring barrios exalting the Japanese people and comparing them to the Filipinos in their philosophy of life; advising the Filipinos to abandon the way of life and thinking of the Americans; assuring the inability of the latter to return to the Philippines because of the Pacific blockade by the mighty Japanese Navy; and branding the "guerrillas" as bands of outlaws and robbers. In one of his speeches, sometime in May, 1944, appellant urged the USAFFEE "guerrillas" to surrender otherwise there will be a massacre in Sangat and all the houses therein will be burned. As his warning failed to

bring results, appellant, together with members under his command and three Japanese soldiers, went to barrio Sangat on May 30, 1944 and started setting fire several houses using as torches dried coconut leaves. Appellant was then heard saying: "These guerrilleros are hard-headed; I told them to surrender through my speeches, but they are hard-headed; now we will burn these houses." Said houses were vacant at the time because their occupants huriedly took to the mountains as raiders were approaching. Fourteen houses were burned. Their values, however, were not ascertained during the trial except those of Benigno Sargadelos and Vicenta Gonzales, which were appraised at ₱1,200 and ₱800, respectively.

Under the first assignment of error appellant contends that the lower court committed error in not dismissing the case and absolving him upon the failure of the prosecution to prove appellant's citizenship. This contention cannot cannot be upheld. True, the element of citizenship was not established so appellant was acquitted of treason. But in the crime of arson citizenship is not essential. Inasmuch as this crime was included in the charge (Count 4 of the in information) and was proved during the trial, the appellant could be convicted thereof pursuant to section 4 of Rule 116 of the Rules of Court and Section 2 of Commonwealth Act No. 682.

The second assignment of error assails the credibility of the witnesses for the prosecution. There is no dispute that the barrio of Sangat was set afire resulting in the destruction of several houses. Even the witness for the defense, Zacarias Villasan, admitted that he had received a report on said fire. The question to be determined then is whether the appellant is responsible or not for said malicious arson. We are satisfied that he is. Four of the victims of the crime, Tito Enad, Gaudencio Quijano, Benigno Sargadelos and Vicenta Gonzales, testified that he led the band that set afire the barrio of Sangat. They were all eye-witnesses. They positively identified the appellant as the principal malefactor. They knew him very well from his several propaganda speeches in public. The testimony of the only witness for the defense, Zacarias Villasan, in the sense that he had heard that the burning of Sangat was executed by the Japanese, cannot overcome the positive statements of the four eye-witnesses.

The alleged contradictions and improbabilities in the testimony of the state witnesses are more apparent than real. They do not affect the established fact that the appellant was the leader of the persons who caused the malicious burning of several houses in barrio Sangat.

Upon the whole, the guilt of the appellant as author of the crime of arson has been established beyond reasonable doubt.

The principal penalty imposed by the lower court being *prisión mayor,* no subsidiary imprisonment should have been imposed in case of insolvency.

The decision of the trial court, therefore, is hereby modified, cancelling therefrom the penalty of subsidiary imprisonment, and affirmed in all other respects, with costs.

Reyes and *Dizon, JJ.*, concur.

Judgment modified.

[No. 1738–R August 24, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JULIANA FRESTO, defendant and appellant

EVIDENCE; CONFESSION; ADMISSIBILITY; SECTION 37, COMMONWEALTH ACT NO. 284 (CEBU CITY CHARTER); INTENTION OF THE LAW.—It is contended that the confession (Exhibit B) of the accused should not have been admitted by the trial Court, being contrary to the provisions of Section 37, Commonwealth Act No. 284 (Cebu City Charter). Said section 37 of the law is intended to protect from self incrimination witnesses called by the City Fiscal of Cebu, whose testimonies may later be issued in the prosecution of cases. It does not refer to persons already being investigated for crimes of their own, least of all to bar written confessions and admissions of guilt. Besides, Exhibit B was admitted without objection of counsel, and it is now too late for him to question its admissibility.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Regino Hermosisima for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Borromeo* for appellee.

REYES, J. B. L., *J.:*

Appellant Juliana Fresto stands charged and convicted in the Court of First Instance of Cebu for the crime of estafa. She now appeals to this Court to reverse the decision of the trial Court sentencing her to suffer an indeterminate penalty of from two (2) months and one (1) day of *arresto mayor* to one (1) year and one (1) day of *prisión correcional,* to pay the amount of ₱5,000 to the offended party Juliana A. Atillo by way of reparation, with subsidiary imprisonment in case of insolvency for not more than 1/3 of the principal penalty, and to pay the costs.

Appellant was a merchant in the City of Cebu and the common law wife of one Attorney Alfredo Noel, who is a cousin of the offended party Juliana A. Atillo. In the afternoon of November 19, 1945, appellant visited the offended party and broached to her a business transaction. The proposition of appellant was that Atillo should give

her ₱5,000, to be added to the ₱10,000 which appellant allegedly had deposited with a certain Colonel Rattan on account of a bid for 500,000 sandbags. Appellant further told Atillo that the latter's contribution would entitle her to a one-third participation in the enormous profits that they expected from the business. Atillo was thus left by appellant much disquieted and dazzled by the prospect of sudden and easy wealth. Timing herself perfectly, appellant returned the next morning and with well feigned excitement told the offended party that Alfredo Noel was waiting and that they could get the sandbags the same afternoon. Accordingly, Atillo gave appellant a check for ₱3,000. It was not difficult for appellant to convince Atillo to give ₱2,000 more; ₱1,000 in a second check and ₱1,000 in cash. The sandbags were not delivered that afternoon but appellant promised the delivery the next day. Appellant failed to keep her promise and subsequently several others. Eventually, she admitted that the bid was not accepted, and stated that the complainant would get back her money. After appellant had failed to repay the ₱5,000 despite several demands and because of Atillo's insistance, appellant finally confessed that she had used it for her own personal benefit. She however asked to be given 30 days within which to return the ₱5,000. To this effect, upon mutual agreement, appellant executed a confession (Exhibit B); but Juliana Fresto again failed to keep her promises.

In her first assignment of error appellant attacks the credibility of the offended party by alleging that a person of the education and experience of Atillo could not be inveilgled into entering such a speculative transaction unless she was the one who solicited participation therein. It is precisely the prospect of a quick and enormous return which swindlers have played upon successfully from time immemorial to excite the cupidity and blind more intelligent and astute persons than the offended party in this case. The fact remains, however, that the evidence on record is conclusive that it was the appellant who, through clever and fraudulent misrepresentations, induced the offended party to part with her ₱5,000 to participate in a fictitious business transaction. In any case, doubt as to the veracity of the testimony of the offended party is resolved by Exhibit B, wherein appellant admitted her guilt. Said Exhibit recites as follows:

"I, Juliana Fresto, of legal age, resident of 48 Gen. Exchavez, Cebu City, acknowledge to have solicited and received on November 24, 1945, from Mrs. Juliana Vda. de Atillo, the sum of ₱5,000 Philippine currency, to buy for and in behalf of said Mrs. Atillo sandbags;

"That in truth and in fact there was no sandbags which could be bought with said amount, contrary to what I represented to Mrs. Atillo;

"That this amount of ₱5,000 was employed by me in the purchase of blasting caps without the knowledge consent, or permission of Mrs. Atillo who did not share either the blasting caps or in the profits thereof;

"That I promise to return to the said Mrs. Atillo the amount of ₱5,000 within 30 days from this date, otherwise I will suffer the consequences of my act above set forth. In witness whereof, I hereunto set my hand this 28th day of January, 1946, at Cebu City."

It is asserted that Exhibit B, should not have been admitted by the trial Court, being contrary to the provisions of section 37, Commonwealth Act No. 284 (Cebu City Charter). A reference to the full text of the law clearly shows that section 37 is intended to protect from self incrimination witnesses called by the City Fiscal of Cebu, whose testimonies may latter be issued in the prosecution of cases. It does not refer to persons already being investigated for crimes of their own, least of all to bar written confessions and admissions of guilt. Besides, Exhibit B was admitted without objection of counsel, and it is now too late for him to question its admissibility.

The claim of appellant that she was coerced to sign Exhibit B is not supported by the evidence and does not merit serious consideration. It is to be noted that the exhibit was signed before a number of people who could have no reason for persecuting the appellant. Actually the confession was sowrn before the Clerk of Court, outside of the Fiscal's office.

It was hinted by appellant that it was her common law husband Alfredo Noel who is the guilty party. Even admitting that this person had actually something to do with the transaction, it is no way lessens the guilt of appellant. It was appellant who made fraudulent misrepresentations to the offended party, cashed the checks and misappropriated the money. Her criminal liability for such action can not be affected by the complainant's obligation for K-rations allegedly taken from the accused, even if such obligation had been clearly established, which is not the case.

The decision of the lower Court is affirmed with costs against appellant.

Labrador and *Paredes, JJ.*, concur.

Judgment affirmed.

[No. 2922-R. August 27, 1948]

CIRILO SOBREMESANA, MELQUIADES OBERIANO and ROSARIO MOLINA, petitioners, *vs.* RICARDO OBERIANO, JUSTO ORBINA, and the HONORABLE JUDGE, Court of First Instance of Iloilo, respondents.

1. PRELIMINARY INJUNCTION, WRIT OF; APPEAL DOES NOT REVIVE A PRELIMINARY INJUNCTION WHICH HAS BEEN PREVIOUSLY DISSOLVED.—The decisions of the Supreme Court have been uniform

to the effect that a preliminary injunction which has been dissolved by a previous order is not revived by the mere fact that an appeal is taken from the decision of the court in the main case. The rulings to this effect have been uniform from Watson & Co. *vs.* Enriquez, 1 Phil., 480, down to Castro *vs.* Peña, G. R. No. L–1444, March 23, 1948. In the face of those rulings, the lower court was clearly in error in holding that because the respondents had perfected an appeal from its order dismissing the complaint, such appeal had the effect of reviving the preliminary injunction, and suspending its dissolution as previously ordered.

2. APPEAL; CONTEMPT; TIME TO APPEAL FROM AN ORDER OF CONTEMPT; CASE AT BAR.—Section 10, Rule 64 of the Rules of Court, specifically provides that the appeal should be taken from an adjudication in contempt "as in criminal cases." This indicates that the appeal should be taken within five days from notice of the order appealed from (Rule 118, section 6). The order complained of having become final by the failure of the petitioners herein to appeal therefrom within the time specified by law, this Court can no longer review the same by certiorari (Alandy *vs.* Gutierrez David, 62 Phil., 841; Testa *vs.* Villareal, 63 Phil., 409).

ORIGINAL ACTION in the Court of Appeals. Certiorari and prohibition.

The facts are stated in the opinion of the court.

Juan Jamora, Jr. for petitioners.
Luis S. Estrella for respondents.

REYES, J. B. L., *J.:*

This case originated in an action filed by the respondents Oberiano and Orbino against the petitioners in the Court of First Instance of Iloilo (civil case No. 907 of the Court) to recover certain real property from the defendants. The lower Court, on August 11, 1947, issued *ex parte* a writ of preliminary injunction prohibiting the defendants from entering or remaining in the land in question. By order of September 24, 1947, the same Court, upon petition of the defendants, dismissed the case and annulled the preliminary injunction of August 11, 1947. The respondents Oberiano and Orbina filed a motion to have the order of dismissal reconsidered and took steps to prefect an appeal against the same, which is now pending in this Court of Appeals.

While the motion to reconsider the dismissal of the main case was still pending resolution by the lower Court, the respondents Oberiano and Orbina on December 24, 1947, moved the lower Court to require the petitioners herein to show cause why they should not be adjudged in contempt for infringing the preliminary injunction on December 10, 1947. The lower Court issued the order prayed for and after hearing, notwithstanding the objections of the petitioners, adjudged them in contempt. This order is dated January 24, 1948.

The petitioners sought to appeal to this Court from that adjudication in contempt, but the lower Court refused

to permit the appeal because the later was filed more than fifteen days after the notice of the order declaring the petitioners in contempt of court. In view of this result, the petitioners now recourse to this Court praying for the issuance of writs of certiorari and prohibition to set aside and annul the order issued by the Court of First Instance of Iloilo on January 24, 1948, as well as another order on May 28, 1948, providing that the preceding order be carried out.

The issues can be summarily stated to be as follows: (1) whether the respondent Judge of First Instance, having dissolved the preliminary injunction of September 24, 1947, could still adjudge the petitioners to be in contempt of court for infringing said preliminary injunction by acts committed on December 10, 1947; and (2) whether the recourse to this Court by way of a writ of certiorari and prohibition is barred by their failure to take an appeal from the order adjudging them in contempt within fifteen days from the notice of said order. On the first question, the decisions of the Supreme Court have been uniform to the effect that an order of dissolution of a preliminary injunction is not revived by the mere fact that an appeal is taken from the decision of the court in the main case. The rulings to this effect have been uniform from Watson & Co. *vs.* Enriquez, 1 Phil., 480, down to Castro *vs.* Peña, G.R. No. 1–1444, March 23, 1948. In the face of those rulings, the lower Court was clearly in error in holding that because the respondents Oberiano and Orbina had perfected an appeal from its order of September 24, 1948, dismissing the complaint, such appeal had the effect of reviving the preliminary injunction, and suspending its dissolution, as ordered on September 24, 1947.

It does not necessarily follow however that this Court may entertain the present petition. The exhibits attached to the petition and to the answer, which have not been traversed, clearly show that petitioners herein were held in contempt of court by order of January 24, 1948. On February 2, 1948, the defendants filed a petition for reconsideration which was denied on March 9, 1948, and no notice of appeal was filed by petitioners herein until March by the petitioners, that their notice of appeal was taken 20, 1948. It is clear, therefore, and the fact is not denied by the petitioners, that their notice of appeal was taken more than fifteen days from the adjudication in contempt, but they claimed that they had 30 days from the rendition of the judgment to appeal therefrom. Section 10, Rule 64 of the Rules of Court, specifically provides that the appeal should be taken from an adjudication in contempt "as in criminal cases." This indicates that the appeal should be taken within 15 days from notice of the order appealed from. (Rule 118, section 6.)

The order complained of having become final by the failure of the petitioners herein to appeal therefrom within the time specified by law, this Court can no longer review the same by certiorari (Alandy *vs.* Gutierrez David, 62 Phil., 841; Testa *vs.* Villareal, 63 Phil., 409).

In the latter case, the Supreme Court rules (p. 412):

"Without going into an extended discussion of the subject, it seems clear that upon the facts disclosed by the record the petition for a writ of certiorari must be denied. In the final analysis, the question raised by the pleadings is whether the order of the Court of First Instance of Bulacan of October 30, 1934, should be set aside and all proceedings taken thereunder declared null and void. While that might have been erroneous, the error could have been cured by appeal. Not only did the petitioner fail to avail himself of that remedy, but he has been guilty of laches in the assertion of his rights. Certiorari will not lie to correct errors of law which do not go into the jurisdiction of the court. (Ello *vs.* Judge of First Instance of Antique and Valdevin, 49 Phil., 152.)"

There can be no question that the court had jurisdiction to maintain the injunction or to dissolve it. The reinstatement of the preliminary injunction after dissolving the same, lay within the discretion of the lower Court (Castro *vs.* Peña, G. R. L–1444, March 23, 1948). In acting one way or the other, the Court would not be exceeding its jurisdiction, so as to afford an independent ground for certiorari. If it erred, the remedy would lie in appeal.

Wherefore, the petition is hereby DISMISSED with costs against petitioners.

Labrador and *Paredes, JJ.*, concur.

Petition dismissed.

UNITED STATES OF AMERICA
PHILIPPINE ALIEN PROPERTY ADMINISTRATION

VESTING ORDER NO. P–244
(Supplemental)

Re: CASH OWNED BY GUN KANRI HITO EKITAI HENRYO KIAKYU KIMIAI

Under the authority of the Trading with the Enemy Act, as amended, the Philippine Property Act of 1946, and Executive Order No. 9818, and pursuant to law, after investigation, it is hereby found:

That by virtue of Vesting Order No. P–244, dated June 30, 1947, Gun Kanri Hito Ekitai Henryo Kiakyu Kumiai was determined to be a national of a designated enemy country (Japan);

That the property described as follows:

Cash in the sum of ₱5,404.24 received by the Philippine Alien Property Administration (now being held by the Fiscal Division) as income of the property located at Adela St., San Miguel, Manila, that Manuel Gaspar sold to Gun Kanri Hito Ekitai Henryo Kiakyu and which sale was declared null and void on April 5, 1947 by the Court of First Instance of Manila in civil case No. 1394, entitled" Manuel Gaspar, plaintiff, *vs.* Gun Kanri Hito Ekitai Henryo Kiakyu Kumiai (Philippine Liquid Fuel Distributing Union), the Register of Deeds of Manila and the Alien Property Custodian, defendants," for the satisfaction of the claim of said Gun Kanri Hito Ekitai Henryo Kiakyu Kumiai against said Manuel Gaspar, is property within the Philippines owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country (Japan);

And it is hereby determined:

That to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan);

All determinations and action required by law having been made and taken, and, it being deemed necessary in the national interest;

There is hereby vested in the Philippine Alien Property Administrator the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States, in accordance with the provisions of the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946.

Any person, except a national of a designated enemy country, asserting any claim a rising as a result of this Order may, within two years from the date hereof, or within such further time as may be allowed, file with the Philippine Alien Property Administrator on Form PAPA–1 a notice of claim, together with a request for a hearing thereon, Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

Executed at Manila, Phiilppines, on April 26, 1950.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on April 26, 1950, at 9:50 a.m.

VESTING ORDER NO. P–244
(Amendment)

Re: REAL PROPERTY OWNED BY GUN KANRI HITO EKITAI HENRYO KIAKYU KUMIAI

Vesting Order No. P–244, dated June 30, 1947, is hereby amended as follows and not otherwise.

By deleting from said Vesting Order No. P–244 the two parcels of land located in the City of Manila, covered by transfer certificate of title No. 64881, which property is more particularly described in Exhibit H of said vesting order, it appearing that at the time of vesting the Japanese corporation was no longer the owner of the property, its title having been annulled by the Court of First Instance of Manila in a decision rendered on April 5, 1947, in connection with civil case No. 1394 entitled "Manuel Gaspar, plaintiff, *vs.* Gun Kanri Hito Ekitai Henryo Kiakyu Kumiai (Philippine Liquid Fuel Distributing Union), the Register of Deeds of Manila and the Alien Property Custodian, defendants."

All other provisions of said Vesting Order No. P–244 and all actions taken by, or on behalf of the Philippine Alien Property Administrator in reliance thereon, pursuant thereto and under the authority thereof, are hereby ratified and confirmed.